

THE
WORKS
OF
JEREMY BENTHAM,

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LIST OF ERRATA.

ERRATA—VOL. I.

Page	Col.	Line	
289	2	44	for <i>repeating</i> put <i>repealing</i> .
341	1	58	for <i>Burlamqui</i> put <i>Burlamaqui</i> .
428	1	39	for <i>patron</i> put <i>pattern</i> .
458	1	1	for <i>dignitate</i> put <i>dignitati</i> .
489			for § 8 put § 9.

ERRATA—VOL. II.

Page	Col.	Line	
170	2	35	for <i>month</i> twice put <i>month</i> .
585	1	35	for <i>but</i> put <i>that</i> .

ERRATA—VOL. III.

Page	Col.	Line	
88	2	48	for <i>usefulness</i> put <i>uselessness</i> .
409	2	last	for <i>ppellatives</i> put <i>appellatives</i> .
448 n		3	for 5 and 6 put 436 and 437.
483	2	17	for <i>questionably</i> put <i>questionable</i> .
526	2	50	for <i>in and</i> put <i>and in</i> .

ERRATA—VOL. IV.

Page	Col.	Line	
89	1	32	put the comma before instead of after <i>half</i> .
237	2	31	for <i>priso</i> put <i>prison</i> .
242	2	4	dele the second <i>by</i> .
311	2	30-31	for <i>paragraphe</i> put <i>paraphr</i> .
365	2	34	for <i>latter</i> put <i>former</i> .
—	—	35	for <i>former</i> put <i>latter</i> .

ERRATA—VOL. V.

Line	Col.	Page	
275	1	17	for <i>inactive</i> put <i>enactive</i> .
411	2	48	for <i>daily</i> put <i>delay</i> .
428	2	40, 47	dele 2, and 3.
429	1	10	dele 69.
467	2	54	for <i>gouts</i> put <i>goods</i> .
486	1	35	for 14 put 11.

ERRATA—VOL. VI.*

Page	Col.	Line	
66 n†		3	for the second <i>his</i> put <i>the granter's</i> .
134	2	33	after <i>everything</i> insert <i>is</i> .
210 n*			for p. 17 put p. 205.
212	2	46	for <i>form</i> put <i>force</i> .
218	2	12	before <i>The</i> insert <i>Where the object belongs to the class of persons</i> .
231	4	last	for <i>trustworthy</i> put <i>untrustworthy</i> , so <i>it be not incredible</i> .
233	1	61	for <i>destroyed</i> put <i>not be increased</i> .
283	1	4	before <i>the</i> insert <i>of</i> .
290	1	12	dele <i>whether this word</i> .

* The corrections on vols. VI. and VII. are from Notes in the original edition by the Author, lately found.

LIST OF ERRATA.

Page	Col.	Line	
291	1	12	for <i>insecurity</i> put <i>in security</i> .
298	2	56	for <i>way</i> put <i>case</i> .
308	1	50 and	for <i>him</i> put <i>it</i> .
321	2	35	before <i>opposite</i> put <i>the propriety of the</i> .
344		note	for <i>of difficult</i> put <i>difficult of</i> .
353	2	61 and 63,	for <i>exemptions</i> and <i>exemption</i> , put <i>exemplars</i> and <i>exemplar</i> .
395	2	63	after <i>side</i> put ?
404	2	63	after to insert <i>answer</i> .
423	2	6	for <i>or the</i> put <i>or say</i> .
431 n*		38	for <i>arrived</i> put <i>aimed</i> .
435	2	2	before <i>without</i> insert <i>with or</i> .
—	—	8	for <i>cases</i> put <i>ears</i> .
441	1	18	*dele <i>non</i> .
446	2	37	for <i>classified</i> put <i>clarified</i> .
459	1	38	dele <i>the description of</i> .
464	2	37	for <i>justice</i> put <i>justices</i> .
475	1	53	for <i>strictly</i> put <i>shortly</i> .
482	2	49	for <i>not</i> put <i>and</i> .
502	2	61	for <i>cupboard</i> put <i>closet</i> .
509	2	53	for <i>distinctive</i> put <i>destructive</i> .
538 n		4	for <i>connexion</i> put <i>scription</i> .
544	2	13	for <i>untempted</i> put <i>undainted</i> .
547 n	2	55	for <i>yours</i> put <i>ours</i> .
563	2	34, 35	for <i>fictitious</i> put <i>factitious</i> .
577 n	2	44	for <i>sincere</i> put <i>sare</i> .
580	1	8	for <i>description</i> put <i>descriptions</i> .

ERRATA—VOL. VII.

Page	Col.	Line	
5 n +		12	for <i>held</i> put <i>styled</i> .
47	2	59	after <i>case</i> insert <i>persons</i> .
71	1	48	for <i>indecision</i> put <i>misdecision</i> .
113	2	35	after <i>those</i> insert <i>supposing them innocent</i> .
121	1	49	for <i>it</i> put <i>them</i> .
139	1	15	for <i>any other than its</i> put <i>in any other sense than that of its</i> .
178	2	38	after <i>manuscripts</i> insert <i>which in relation to it are</i> .
210	2	49	for <i>counted</i> put <i>united</i> .
256	2	14	for <i>oral</i> put <i>real</i> .
276	2	2	for <i>rain</i> put <i>none</i> .
286	1	39	for <i>pairs</i> put <i>pens</i> .
326	2	25	for <i>converse</i> put <i>curious</i> .

ERRATA—VOL. VIII.

Page	Col.	Line	
45	2	21	after to insert <i>one</i> .
203	2	54	for <i>or other</i> put <i>another</i> .
244	2	25	for <i>hydralgen</i> put <i>hydrogen</i> .
410	1		for Section IV. put Section VI.
417	1	30	dele the first <i>of</i> .

ERRATA—VOL. IX.

Page	Col.	Line	
285 n		last	for 9 put 19.
471	1	19	for <i>less</i> put <i>loss</i> .
497	1	3	insert a comma after the second <i>day</i> .

ERRATA—VOL. X.

Page	Col.	Line	
375	1	39	for <i>Sir T.</i> put <i>Sir F.</i>
377		Contents	for <i>Sir T.</i> put <i>Sir F.</i>
474 n	2	3	for <i>Charlotte</i> put <i>Caroline</i> .
525	1	50	for <i>writing</i> put <i>writings</i> .
559	2	27	for <i>comments</i> put <i>commentaries</i> .

190. Must exist in some form in all languages, 187. Universal grammar a standard of comparison, 187-188. Words as the integers of propositions, 188. Single words by elipsis containing propositions, *ib.* Enumeration and characteristics of the parts of speech, *ib.* General division into simple and compound, 188. Simple either significant by itself or not significant by itself, *ib.* Substantives divided into real and fictitious entities, 189. Into proper and common names, *ib.* Elements of the proposition, *ib.* Accessory ideas consisting of entire propositions, of which the parts of speech must be divested—Gender, number, case, mood, tense, &c., 190. *Properties desirable in a language*, 190-191. Different for different purposes, *ib.* Enumerated, 191.

Grammarians—labourers in a particular department of Logic, viii. 323.

Grammatical exercises—Uses of, and place in the Chrestomathic system of instruction, viii. 33-34.

Grammatical instruction—Dryness of, to the minds of the young, viii. 19.

Granby—The Marquis of, noticed, x. 230.

Grand Jury. *See* Jury—Grand.

Grandier—Urban—Anecdote of, vii. 97.

Grant—Sir William, noticed, v. 355, 370, 562.

Grasse—Admiral de—Operations of, x. 95, 101.

Gratitude—Mode of operation of, as an instrument of political corruption, iii. 476-477 n.

— a means of corruption, and a subject of praise when so used, ix. 70.

Grattan—Animadversions on the conduct of, in the breaking up of the Volunteer Association, iii. 618-620.

Gratuitous services—Propriety of the public receiving, from eleemosynary advocates, judges depute, &c., iii. 342-345.

— public service — Burke's arguments against, controverted, v. 294-297.

Gravitation on the earth—The moon the only invariable source of, viii. 132.

— the general or universal law of bodies, vii. 85.

Gray—James—master of the High School of Edinburgh—his opinions on the new instruction system, viii. 17.

— Report by, on favourable result of the Lancastrian system in his class, viii. 61-63.

Great Seal—Pardon under, restores competency of witness, vii. 435.

Greece (ancient)—Effect of the games of, ii. 227.

— Nature of the Legislation of, i. 467.

— Evil principles inculcated in the history of, i. 318.

— (modern) a country to which an increased army might be advantageous, ix. 418.

Greece—Testimonials from, in favour of Bentham, as a legislative draftsman, correspondence with the Provisional Government of, iv. 580-592.

— Correspondence with Dr Parr, on framing a code for, x. 534-537.

Greek Language—the best language to frame a general encyclopaedical nomenclature from, viii. 72, 82 n +, 97-100.

— a useful language for adapting French from to the English, viii. 320.

— How far the acquisition of, necessary or useful in the middle ranks of life, viii. 17.

— free from the ambiguity produced in the English by the conjunction *or*, viii. 84-85 n.

— unsuited for a treatise on universal grammar, viii. 342.

— Bentham's preference of, to the Latin, on account of the expletives, x. 35.

— Value of a knowledge of, estimated, ii. 258-260.

Greeks (ancient)—The absence of duelling among the, promoted assassination, i. 543.

— Robberies among the, i. 70.

— Unnatural crimes among the, i. 175.

— Prostitution among the, i. 546.

— Moderateness of pay of officers among the, ix. 378.

— (modern)—Letter to, recommending them not to appoint a king, x. 538-539.

Greek youths—Correspondence as to Bentham and others undertaking the education of, iv. 588.

Green wax—Surveyor of. An illustration of barbarous nomenclature, viii. 71 n.

Greenwich Hospital—Nature of the court held by the auditors of, ix. 458.

— Costliness and waste in, ix. 376.

— Propriety of the establishment considered, ii. 219.

Gregoire—M.—Notice of, x. 399.

Gregor v. Lord Arundel—Case of, vii. 217 n.

Gregory—Dr—Remarks on his having written a book on Liberty and Necessity, x. 216.

Gregory VII. noticed, i. 549.

Greills and Gansel—Case of, cited, vi. 457.

Grenada case—The, adduced to show that the Crown has no power to legislate for colonies but through Parliament, iv. 266-269.

Grenadiers—Origin and use of, ix. 398-399 n.

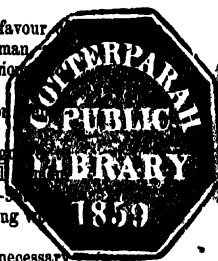
Grenville—George, noticed, iv. 267-268.

Grenville Act—The—Extension of the principle of, to a court of Lords' Delegates for appeals, v. 184.

— Badness of the system previous to, vi. 329; vii. 534.

— casually noticed, ii. 218-219; vi. 329; vii. 451, 534.

Grenville—Lord—Letters to, on the proposed reform of the administration of justice in Scotland, v. 3-53.



Grenville—Lord—noticed, v. 321; ix. 141; x. 422, 423-425, 432, 433, 468.

Gretna Green—Marriages at, noticed, i. 357.

Grey—Earl—Opinions of, on Parliamentary Reform, considered, iii. 443 n, 450 n, 461 n, 480 n, 517, 518 n, 519, 532.

— Vague expressions of, against Radical Reform, examined, iii. 600-602.

— Opinion of, on Universal Suffrage, iii. 470.

— Notices of, v. 371, 586; x. 468.

Grief—How far the degree of manifested, is capable of measurement, i. 27-28 n ||.

— Practices that give increase to, x. 530.

Griffenhoof—Parson—Notice of, x. 124.

Griffin—Admiral. Visit to, by Bentham, in his youth, x. 46.

Grose—Mr Justice—referred to on Libel Law, v. 105 n, 112.

— referred to on exclusion of evidence, vii. 340.

Grosvenor—Lord, (afterwards Marquis of Westminster),—noticed, v. 377; xi. 120.

Grote—George—Visit by Bentham to, x. 561.

— noticed, x. 562, 577.

Grotius—Hugo—noticed, i. 150 n †, 340; ii. 524; iii. 158, 220; viii. 128 n.

Grove—The family of. Inquiry regarding, x. 474.

Grove—Mr, Bentham's uncle. Notices of, x. 24.

Grove—Alicia. Bentham's mother, x. 3. See Bentham—Mrs.

Grove—Mrs, Bentham's grandmother. Character of, x. 6, 23.

Guadalupe—Declaration of separation from France by, iv. 409.

Guardian—Formalities of appointment of, vi. 525-528.

— Responsibility of, for ward, in regard to reparation for offences, i. 385.

Guardians—The Eleemosynary Advocate to have a superintendence over the conduct of, in regard to their wards' litigations, by the Constitutional Code, ix. 578-579.

— Circulating Annuity notes as an investment for funds in hands of, iii. 144.

Guardian and Ward—Questions regarding, ranked among complex suits, ix. 81.

— — Principles of the Civil Code regarding, i. 347-348.

Guardianship of Minors and Imbeciles—Nature and origin of, i. 124-125. In former, necessity of drawing an abstract line—in latter, of leaving the necessity to arbitrary decision of some one, 125.

Duty of guardian to do exactly as ward would have done if competent, ib.

— of minors, imbeciles, &c. Provision for, in Despatch Court Bill, iii. 386.

— Effect of the relation created by, on testimony, vi. 162; vii. 576.

— Offences to which the condition of, is exposed, i. 126.

Guienne. Practice of the Provincial Assembly of, ii. 341, 343-345, 348.

Guillotine—The. Invented with a merciful object, ix. 487 n.

Guilt—Avoidance of justiciability as affording evidence of, vii. 50-53.

— Altering things evidentiary of, vii. 15-18. See Real Evidence—Forgery of.

— Clandestinity as evidence of, vii. 47-48.

— Confusion of mind as evidence of, vii. 44-45.

— Exposure of—no good ground for excluding testimony, vi. 106-109; vii. 441-486.

— Facts having a tendency to establish, vi. 45. See Circumstantial.

— Fear indicated in deportment, as evidence of, vii. 45-47.

— Non-responsion, and false or evasive responsion, as evidence of, vii. 24-29.

— Plea of—Judge persuading criminal to withdraw, vi. 473.

— Preparations, attempts, declarations of intention, and threats, as evidence of, vii. 18-24.

— Situation of the accused in respect of motives, means, disposition, character, and station in life, as evidence of, vii. 53-62.

— Self-inculpatory testimony as evidence of, vii. 29-45. See Self-inculpatory.

— Suppression or fabrication of evidence as indicative of, vii. 48-50.

Guilty—Verdict of, must involve a decision on the law, v. 462.

— or Not Guilty—a question of law and fact combined, ii. 155.

— or Not Guilty—No medium between, expressive of want of opinion on the subject, in English law, ii. 157.

— person—Escape of, an inferior evil to conviction of an innocent, ii. 133.

— The. How far the effect of punishment can be limited to, i. 476. See Punishment—Proper seat of.

Guinea corps—The name applied to Special Jurors, v. 79.

Guineas—Extent of the use of, as a currency, iii. 111 n.

Gulliver's Travels noticed, vii. 89.

— — Bentham's reminiscences of reading, in his boyhood, x. 21.

Gunning—The Misses—noticed, x. 117.

Gunpowder as a source of motion—its applicabilities, viii. 136-137.

— Regulations against keeping, in large quantities, i. 535.

Gurney—Mr—noticed, v. 359.

Gymnastic Exercises—why necessarily excluded from the Chrestomathic system of Education, viii. 43.

H

Habeas Corpus Act—Characteristic of the, iii. 204 n †.

Habeas Corpus Act—Suspensions of, i. 576 n; iii. 435.

— — — Violation of, charged against the method of governing New South Wales, iv. 277-278; xi. 128-134.

— — — The system of granting crown charters to colonies a violation of, iv. 259-260.

Habit or Practice—Nature of, i. 37.

— a fictitious entity, i. 57 n †.

— The universal dominance of, over reason, viii. 241-242.

— Application of punishment to the extirpation of, i. 89.

— Suppression of, to be kept in view in the measurement of punishments, i. 402.

Habit of obedience—The foundation of government on, explained; and the component parts of, analyzed, i. 263-264 n.

Habits—National. Method of dealing with, in introduction of reforms, i. 180-184.

— proper subjects of the attributives, good and bad, virtuous and vicious, i. 216-217.

— Flexibility of, i. 436.

Habitation—Indication to be given of, by litigant, ii. 55-56.

Habitations—Method of indicating and recording, for election purposes, iii. 583-588.

Hague—The. Visit to, by Bentham, on his return from Russia, x. 180.

Haiti—a country to which an increased army might be advantageous, ix. 418.

Hale v. Cove—Case of, cited, vi. 226 n*.

Hale—Sir Mathew—Estimate of his merits, ii. 210 n; v. 389.

— — — His condemning for witchcraft noticed, ii. 400; v. 493; vii. 97; ix. 108.

— — — Instances of false conviction of murder cited from, vii. 69.

— — — Passage from, against quibbles, vii. 308.

Hales—Mr Little—Anecdote about, x. 50.

Half and half—Applicability of the expression to a jury composed half of one class half of another, v. 165-166.

Halhed's Gentoo Laws quoted, vi. 272, 324.

Halifax—Lord—Verdict against, at Wilkes' instance, commented on, i. 394 n.

Halifax—Bishop, quoted, vi. 302.

Hall—Colonel—Allusion to, x. 565; xi. 33.

Halley—his reasonings on the testimony for the Scripture, vi. 243.

Halley's Breslaw Tables—A fundamental error in, viii. 366.

Hamburg—Practice of the House of Correction at, as to giving the prisoners an interest in the profit of their work, iv. 13.

Hamilton—Mr, of Payne's Hill—Notices of, as a visiter at Bowood, x. 111, 113.

Hamilton—John—made citizen of France, x. 281.

Hamilton—Lady—Notices of, in a letter from Lord Wycombe on Neapolitan Politics, x. 310-311.

Hamilton—William—Colonel Burr's duel with, characterized, x. 432; xi. 14.

Hamilton's Parliamentary Logic criticised, ii. 383-387, 414 n.

Hammond—the name of a school-fellow of Bentham, x. 30.

Hampden, (senior,) noticed, iii. 427 n.

Hampden, (junior,)—The penalty imposed on, iii. 427 n.

Hand—Burning on—a restorative to competency of witness, vii. 434-435.

— — — Origin and employment of the practice of, i. 510-511.

Handwriting—Impediments to proving, from non-examination of party, iii. 416 n.

— Procuring extraneous evidence to, when the party might be questioned—the practice examined, vii. 447.

— Indications of spuriousness from, vii. 181.

— Evidence of, vii. 177-183.

— Similitude of—Evidence from, vii. 177-180.

Hanging—Defectiveness of, as a means of putting to death, i. 442.

Hannay—Trial of, noticed, vii. 257 n ||.

Hanover—Despotism in, iii. 562.

— Expense entailed on, by conversion into a kingdom, ix. 89.

— Evils of its connexion with this country, iii. 439.

— Visit to, by Bentham, on his return from Russia, x. 180-181.

Hanway—Jonas—noticed, i. 426.

HAPPINESS—What the term is employed to designate, iii. 214.

— The author's first mention of, as the source of good, i. 237.

— Distinction between pleasure and, x. 585.

— The common end of education, x. 71.

— made the source of a division of the Arts and Sciences, as the subject of every art, and the object of every science, viii. 82-83.

— The proper end of the acquisition of knowledge and of logic as a means towards it, viii. 241.

— Axioms of mental pathology, with reference to, iii. 224-230.

— Absurdity of applying the term to a condition which is avoided, i. 344.

— Proneness of the mind to discover means of, i. 436.

— Every man pursues what leads to his own, ix. 5-6.

— Dependence of, on knowledge, vi. 264.

— Relation of law to, vi. 7-8.

— Ratio of, to amount of wealth, ii. 271-272.

Happiness—shown not to rise with the arithmetical ratio of property—Principal elements in possession of poor as well as rich, ix. 15-17.

— and morality—The connexion between, an illustration of design, ii. 230 n†.

— of the community—the object which the legislator should have in view, and the elements in which it consists, i. 301-303.

— The principle of Utility limited to the furtherance of, i. 1.

— Perfect—An imaginary desideratum, i. 194.

Happiness—Greatest of all—Not capable of accomplishment, ii. 269 n*.

Happiness—Greatest—The term preferred to and substituted for Utility, i. 1 n*, 271 n.

HAPPINESS—THE GREATEST, OF THE GREATEST NUMBER—An account of the manner in which the principle of, was first embraced by Bentham, and brought out in the Fragment on Government, x. 79-80.

— — — — Suggested either by Priestley or Beccaria, x. 142.

— — — — The statement of the principle, is the statement of the fact that the author believes it to be the leading principle of a sound system, ix. 3-5.

— — — — A code founded on, the object and interest of the people, but not of lawyers, ii. 13.

— — — — The Fragment on Government based on, i. 242.

— — — — Circumstances in which imbecility of the laws conducive to, ii. 138-139.

— — — — ought to be the first principle of government, ix. 5-6.

— — — — should be kept in view in all newspaper articles, viii. 582.

— — — — Best security for the pursuit of, in the people having the choice of their own legislators, ix. 99-100. *See* Constitutive—Supreme.

— — — — Principles that have been substituted for, in most systems of law, ix. 1.

— — — — The principle of taste allowed to preponderate over, ix. 46.

— — — — The qualifications that it requires in a code of Laws for any state of Liberal Principles, iv. 537-563. All-comprehensiveness, 537-538. An accompanying Rationale, 538-539. That the Rationale shows the conduciveness of the laws to happiness, 539-543. That the various parts of the Rationale be in contact with the laws to which they apply, 543-545. That the drawing the code be open to competition, 545-551; but no reward for drawing, 551-554. That the draught be by one hand, 554-559; and that it be known to be so, 559. That the author's name be known, 559-560. That

foreigners be admitted, and favour shown to foreign draughts, 560-563.

Happiness—The greatest, of the greatest number—Requires that all governors be displaceable, ix. 95.

— — — — The end in view of the Constitutional Code, ix. 150.

— — — — The proper object of judicial procedure, ii. 6.

— — — — Disregard of, in the proposed Spanish Code, animadverted on, viii. 516-517.

— — — — Casual notices of, and references to the principle, ii. 403, 442, 443, 446, 482, 537; iii. 34, 210, 220, 224, 271, 272, 274, 325, 388; iv. 447, 575; v. 329, 374, 413, 419, 608; viii. 471, 472, 491, 497, 499, 509, 510, 511, 515, 517, 544, 574; ix. 1, 31, 36, 38, 41, 43, 77, 97, 114, 119, 127, 128, 131, 137, 144, 217, 303, 391, 407, 454; x. 46, 79, 81, 561, 581.

Harborough—Lord, noticed as a visiter at Bowood, x. 123.

Hard—Use of the adjective as an argument against compound interest, iii. 18.

Hard labour—fallacy in the term as used in prison discipline; the labour itself, not its economy or beneficial effects on the prisoner, looked to, iv. 144.

Hard Labour Bill—View of the, iv. 1-35.

— — — — Preface to View of the, iv. 3-5.

— — — — Circumstances in which it came under the author's notice, i. 255; xi. 98.

— — — — View of—Circumstances connected with the publication of, x. 86.

— — — — Incidental remarks on the system of labour proposed in, iv. 51.

Hardiness — a circumstance influencing sensibility, i. 23.

Hardwicke—Earl of—Cobbett's prosecution for libel against, adduced as illustrative of the state of Libel Law, v. 106-114.

— — — — noticed, v. 159, 353; vii. 482, 530 n.

Hardy's Life of Charlemont—quoted on the Irish Volunteer Association, iii. 618.

— — — — Dumont's opinion of, x. 462.

Harmony—in what respects distinct from melody, viii. 305-306 n.

Harpichord—Instructions for performing on the, x. 124-125.

Harrington—Earl of—Account of, xi. 3.

Harris—James, (Author of *Hermes*), blinded by the Formulas of the Aristotelian Logic, viii. 110 n.

— — — — casually noticed, viii. 27 n, 84 n, 146; x. 41.

Harris—Sir James, met by Bentham at The Hague, x. 180.

Harrison—Joseph—Case of the king against —Untenability of the indictment in, v. 253-261.

Harrison's Chancery quoted, vi. 230-232.

Harrowby—Lord, noticed, xi. 47.

Harrowgate—Description of, by Dumont, x. 415-416.

Hart—Rex v. Case of, cited, v. 141-142 n.

Hartley—David, noticed, i. 57 n ‡; iv. 64; v. 370; x. 561.

Hartley—Mr. His plan for obviating fires by iron plates, iv. 97 n.

Hartop—Jonathan. His recollections of Milton, Killigrew, and Charles II., x. 52.

Harvey—Daniel Whittle. Mention of, v. 270.

Hastings—Marquis of. Question as to the prize-money earned in India under, ix. 383 n.

— — Mention of, xi. 2.

Hastings—Warren, censured, i. 6 n *.

— — Impeachment of, a memorial of the inefficacy of the process, v. 504.

— — Bentham consulted on the trial of, by Lord Lansdowne, x. 117-118, 231.

— — Trial of, casually noticed, ii. 548; vi. 244, 329, 400; vii. 357.

Hatred, malice, &c., as designative of motives, i. 203.

— as a motive in the infliction of punishments, x. 69-70.

— to the Constitution—Libel prosecutions on the charge of exciting, considered, v. 243-245.

Hatsell—His censure of the Commons for non-attendance, iii. 509-511.

— noticed or quoted, ii. 321, 335, 337, 347; iii. 495, 509-510.

Hauterive—M., one of Talleyrand's clerks, noticed, x. 379.

Hawkesworth—John, noticed, x. 50.

— — His Adventurer referred to, vii. 434.

Hawkins—Sir John—Reminiscences of, x. 50.

— — — Opinion of the character of, x. 87.

— — — Mention of, x. 41.

Hawkins—Sergeant, on the effect of interest on testimony, vii. 404-405 n.

— — noticed or quoted, v. 354, 355; vii. 181, 353, 409-410, 474, 481, 482.

Hawkins and Simpson—Trial of, vii. 182 n.

Hayes—Father—Reference to, x. 523.

Headman—Local, in Constitutional Code—General view of the office of, ix. 148.

— — General definition of, in the Constitutional Code, ix. 467.

— — Specific provisions for, in the Constitutional Code, ix. 612-625:—

— — Functionary who has to attend on the spot, to every description of political action, ix. 612-613. Number limited only by expense, ib. Analogy with the French Maire, 613. Inequality of the English Magistracy system, ib.

— — Fields of service of, ix. 613-614. The head of all the authorities whose power confined to the lowest subdivision, 613.

Acts as the Deputy or Minister of the Legislature, ib.

Headman—Local—Self-suppletive function of—arrangements for appointment of a Depute permanent, ix. 614.

— — General-Assistance Function of, ix. 614. Execution and effect to mandates, &c., of Ministers and Judicatories, ib.

— — Legislature-Aiding Functions of, ix. 614-615. Presidential function—occupies the chair at public meetings, ib. Convocative Function—convening of inhabitants on requisition, 615.

— — Administration-Aiding Functions, ix. 615-617. Stipendiary army-controlling—control over the military force in his bounds, in respect of all acts of military necessity, 615. Stipendiary navy-controlling Function, ib. Damage-Preventive Function—damage by calamity or casualty, such as conflagration, inundation, &c., 615-616. Damage occasioned by absence of the proprietary custodian, either from calamity or delinquency, 616. Eleemosynary Function: under the direction of the Indigence Relief Minister, 616-617. Hospitality-exercising Function—to agents of foreign powers, 617.

— — Sedative Function, ix. 617. Power to quell disturbance—having at his command the Radical or Popular Military force, ib.

— — Justice-Aiding Function—assistance to Judge when demanded or needed, ix. 617.

— — Uncommissioned-Prehension-Approving Function, ix. 617-618. When a person apprehended for a crime may be brought before the Headman, if no Judicature at hand, 617. He may give approval of the proceedings, 617-618. Connexion of this with Sedative and Justice-Aiding Functions, 618. Compared with English system, and its professed allowance of the apprehension of a felon, 618.

— — Judiciary Power-controlling Function, ix. 618-619. Used in case of abuse of authority committed under pretence of executing warrants, &c., of courts of justice, ib.

— — Subjudiciary Topographical Function, ix. 619. Cognizance of judiciary proceedings as to the partition or union of lands, transfer, eventual transfer, settlement of boundaries, fixing of water-courses, ib.

— — Subjudiciary Venditive Function, ix. 619. When, in consequence of warrant of court, property to be sold—superintendence to prevent collusion, &c. ix. 619.

— — Communication-Aiding Function—to be used when a public functionary may chance not to have the means of communication from place to place, ix. 619-620.

— — Beneficent-mediation Function, ix.

- 620-621. Use of good offices to heal family differences, 620. Not a function he can be responsible for, *ib.* Where women in the matter, benefit of having the assistance of a female, *ib.* May give instruction to the parties as to probable legal results, *ib.* Compared with the Danish Reconciliation Courts, 620-621.
- Headman—Local—Beneficent-information Function, ix. 621. Instances—information as to the labour market; means of applying for sums due, &c., *ib.*
- — Travelling-disputes-settling Function, ix. 621-623. Instances—coachmen, innkeepers, &c., as to charges, luggage, &c., 621. Call for promptitude in such cases, 621-622. In other remedies—dilemma between giving too much power to the innkeeper, &c., or subjecting him to perpetual fraud, 622. Inefficacy of existing remedies, *ib.* Considerations as to the amount of power which the Legislature should put into the Headman's hands, 622-623.
 - — Hospitable Post-obituary Function, ix. 623. Exerciseable where a stranger dies in the locality, *ib.*
 - — Term of service—same as that of member of Legislature, ix. 623.
 - — Attendance—same rules as in case of Judge, ix. 623.
 - — Remuneration—Pecuniary competition system, ix. 623.
 - — Who locable—Application of the Consummation period, ix. 623.
 - — How located—By the electors, ix. 623.
 - — How dislocable—By the Ministers entitled to his services, the Judge, the Prime Minister, the Legislature, and the Electors, ix. 623-624.
 - — Reports—Publicity. Hanging up Tables of Births, Marriages, and Deaths, ix. 624.
 - — Relation of, to Local Registrar, ix. 624-625. Registrar records acts of Headman, 624. May attach opinion, *ib.* Bound to give official information of breach of duty on the part of one another, *ib.* Minutation of portions of discourse by Headman, 624-625. Presence of Headman, 625.
 - — Securities for appropriate aptitude enumerated, ix. 625.
 - — Inaugural declaration of, ix. 625.
 - — for purposes of judicial communication, ii. 55.
- Health—The branches of Art and Science appertaining to—their place in the Chrestomathic system of Instruction, viii. 35-36.
- as a circumstance influencing sensibility, i. 22, 23.
 - its dependence on industry and active habits, iv. 163.

- Health—Regulations for preservation of—Use of Registered Statistics for, ix. 627.
- Preservation of, as a feature in prison discipline, iv. 123.
 - Preservation of, to convicts through instrumentality of Panopticon, iv. 39, 122.
- Health Minister—Provisions regarding, in the Constitutional Code, ix. 443-445. Functions, 443. Special functions in the army and navy, 443-444. Functions as to the medical men under the Indigence-Relief Minister, 444. Functions as to hospitals, lazarettos, and laboratories, *ib.* Prisons, madhouses, and poor-houses, *ib.* Establishments for sale &c. of drugs, surgical instruments, &c., *ib.* Procurement of supply of water, *ib.* Functions where public health may be affected by sewers, burial-places, theatres, &c., 444-445. Registers of health-regarding evidence—bills of mortality, registers of weather, &c., 445. Custody of medical museum—contents, *ib.* Supervisance of qualification-examinations for medical offices, *ib.* To prevent combinations prejudicial to the public among medical men, *ib.* Publication of proceedings, *ib.*
- Hearing—Nature of defects in sense of, vi. 250.
- Facility of, as a desideratum in political assemblies, ii. 317.
- Hearing—Initiatory, in Procedure, ii. 62-72. Commencement of suit by personal application, 62-63. Initiatory application for mandates to bring parties into court, 63-64. Avoidance of reiteration of suits, 64-65. Various kinds of demand paper for various suits, 66-70. Notes on them, 70-72.
- Hearsay evidence, vii. 132-134. Defined as supposed oral testimony transmitted through oral, *ib.* Nine variations to the character of the testimony, 133. Characteristic fraud of it, *ib.* Practice of English law as to, 134 n.
- — Simplest example of makeshift evidence, vi. 57.
 - — liable to be superfluous, vi. 89.
 - — Purposes for which useful, vi. 89-90.
 - — and extrajudicially-written compared, vii. 134-137. Former less liable to characteristic fraud, 134; but more likely to be materially incorrect and incomplete, 135-136. Efficiency of cross-examination, 136-137.
 - — compared with direct evidence, vi. 172.
 - — compared with transcriptitious evidence in regard to probative force, vii. 142.
 - — self-criminative—admitted in cases where direct evidence is refused, vii. 468-469.

Hearsay evidence—with reference to safeguards against deception, vi. 165.
 — — Instruction concerning the probative force of, vii. 134-137.
Heat—Method of uniting, with ventilation, considered, iv. 110-118.
Heathen—A man converted into a, by excommunication, i. 515.
Heber—Bishop, noticed, v. 269.
Hebrew Language—Estimate of, x. 583.
Heedlessness with reference to an act—Nature of, i. 43.
Heineccius noticed or quoted, i. 139; iii. 162; vi. 230-231, 302-303; vii. 70, 525.
Heirs—System of apportionment among, i. 334-336.
 — How far they should be liable in, or be entitled to, compensation for offences, i. 523-525.
 — of an offender should fulfil his liability for satisfaction, i. 372.
Hell-fire Club at Oxford—Account of, x. 39.
Helluo curiarum—or Lord Brougham displayed, v. 549-612.
Helmont—Van, noticed, ii. 401; viii. 217.
Helps to recollection—How far compatible with obstructions to invention by witnesses, vi. 446-451. Difficulty of solving the question, 447. Superiority of oral interrogation, 448. Time to answer should be brief, 449. Preservative both from invention and from extraneous assistance, 449-450. Position of examiner as to interest, 450-451.
Helpless—Justice for the—Arrangements for, in the Constitutional Code, ix. 489-493.
Helpless litigants' fund—Establishment of, prayed for in Petition for justice, v. 503.
Helvetius—Opinion that he has prepared the way for a digest of the law, x. 70-71.
 — His opinion on the power of education, iv. 65.
 — noticed or quoted, i. 49 n †, 196; ii. 197, 233; iv. 447 n; v. 372; x. 27, 54, 58, 270, 587.
Henderson—A man taken by Bentham to Russia in the service of Prince Potemkin, x. 149, 152-156.
Hendon—The farm-house of—taken by Bentham as a residence, x. 182.
 — Bentham's account of his abode at, x. 248, 323.
Henley—Orator—His expeditious method of making shoes by cutting down boots—an illustration, viii. 108.
Henry II.—Simplicity of procedure in the reign of, ii. 151-152.
Henry III. noticed, iii. 514; viii. 577 n.
Henry V.—His committal by Chief-justice Gascoigne—a subject for a historical picture, x. 73.
Henry VII.—Effects of his reign on Parliament, iii. 514.

Henry VII. noticed, vii. 459.
Henry VIII.—Use made by, of the wealth acquired by suppression of monasteries, iii. 514.
 — — Policy of the reign of, characterized, ii. 444.
Hereditary honours as rewards, ii. 194.
 — nobility—Effect of, on the fund of reward for merit, ii. 201.
 — Professions. Bossuet's opinions on, ii. 229 n †.
 — succession of powers—Article in the second French Declaration as to, criticised, ii. 525-526.
Heritable jurisdictions in Scotland. The abolition of, in connexion with the Union, considered, ii. 406.
Hermosa—Judge-advocate of Spain. Observations on his Panegyric on judicial delays, viii. 474-482.
Herodotus—Bentham's reading in, x. 562-563.
Herrera—Don Prospero, Minister from Guatemala to France, xi. 71.
Hertford—Lord—Anecdote of, x. 108.
Hertford—Earl of, noticed, x. 134.
Hesitation, as evidence of guilt, vii. 44.
Hesse Cassel—Landgrave of. Stipulation as to troops lent by, for American war, ii. 240.
Hibbert's Philosophy of Apparitions referred to, vii. 105.
High Commission—Proceedings before, a popular argument for excluding self-criminative testimony, vii. 455-458.
High School of Edinburgh—Successful employment of the monitorial system exemplified in, viii. 59-63.
Highlanders—Law against the dress of, considered, i. 184.
Highwayman—Characteristic reward for apprehension of, ii. 217-218.
Hill—Mr. His school at Hazlewood, iv. 592 n.
 — — His establishment visited by Bentham, x. 561.
Hill—John—Trial of, noticed, vi. 45 n *.
Hindman—the name of a school-fellow of Bentham, x. 30.
Hindoos—Illustrations from, as to the management of prejudices, i. 182.
 — Considerations regarding the infliction of imprisonment on, i. 422 n.
 — Inapplicability of British Institutions to, i. 185-188.
 — in British India—Application of Jury trial to, ii. 137-138.
 — Method of administering oath to, vii. 423, 431 n.
 — Code of—Peculiarities as to false testimony in, vi. 271, 272, 324.
 — Effect of the system of castes among, ii. 227.

Hindustan—Conduct of Britain to, i. 6-7 n*.
 Hingham noticed, vii. 269.
 Hire—Perpetration of injury for—an aggravation, i. 165, 168.
 Hiring—That a reasoner is, is no argument against his reasoning, if in itself sound, iv. 417.
 Hiring of Service—Obligations connected with, i. 343.
 History—Every branch of Art and Science has its, viii. 77.
 — Authorities should be quoted in works on, ii. 364 n.
 — Ancient. Evil principles inculcated in, i. 318.
 — Natural. Stage it should occupy in Education, viii. 15.
 — Natural. Inapplicability of the term to express what it is employed for, by the use of the words in totally different meanings on other occasions, viii. 68-69.
 — Falsely awarded to the sole province of the faculty of memory by D'Alembert, viii. 77.
 Historical Chronology—defined and located as a branch of education in the Chrestomathic School, viii. 29, 33.
 Hoarding—Difficulties in the way of, on the part of the working classes, viii. 408.
 Hobart—Henry, quoted, vi. 315-316 n.
 Hobbes—noticed, iii. 158; x. 73.
 Hobby horses—Tenderness of the hoofs of People's, x. 216.
 Hobgoblin Argument—The; or Fallacy of No innovation, ii. 418-420.
 Hobhouse—Sir J. C.—Wish of, to edit the Book of Fallacies, x. 519.
 — — — Letter to, on the Catholic claims, x. 523-525.
 — — — noticed, viii. 470.
 Hodgson—Mr.—Account of, as a visiter at Bowood, x. 109-110, 115.
 Hogan—Major—His pamphlet, and the prosecutions for libel occasioned by it, v. 65.
 Hogarth—His Beer Street and Gin Lane, i. 540 n*.
 — Reminiscences and notice of, x. 50; xi. 105.
 Holidays—Judicial—Extent and evils of, vii. 241-245.
 Holinshed—Raphael—quoted, vii. 461.
 Holland—Comparative wealth of, iii. 77.
 — Arrangements as to Assembly of Estates of, ii. 321.
 — Reasons for a Second Legislative Chamber in, examined, iv. 427-429.
 — visited by Bentham on his return from Russia, x. 180-181.
 — Domestic economy in, i. 544.
 — Letter to Bentham, with remarks on the political position of, in 1794, x. 297-300.
 Holland—(the first) Lord—His political connexion with Lord Shelburne, x. 101.

Holland—(the second) Lord—Letter to, requesting his intervention to facilitate a project of Bentham's to emigrate to Mexico, x. 439-444.
 — — Letters from, in answer to Bentham's applications regarding Mexico, x. 447-448.
 — — Letter from Rome, supposed to be by, x. 483-484.
 — — Letters from, x. 467, 477.
 — — Letter to, x. 477.
 — — Historical objections of, to Annual Parliaments answered, iii. 562.
 — — Casual notices of, x. 453, 445, 455; xi. 128.
 Holograph deeds in France and Scotland, vi. 515 n.
 Holography, as a method of authentication *ab intra*, vi. 515.
 Holt—Chief Justice—Opinion of, on rewards for national services, v. 285.
 — — — noticed, v. 81.
 Holy Alliance—The—characterized, x. 539.
 Homicide as distinguished from other personal offences, i. 114.
 — Secret—Nature of, as a species of oppression, viii. 560.
 — How satisfaction for, to be measured, i. 372.
 — The quantity of removals from court to court that may take place in the trial of a case of, v. 528.
 — Deodands for, animadverted on, i. 485-486.
 — Prohibition of acts preparatory to, i. 560-561.
 — Malice inferred from, vi. 55-57, 304.
 — Unlawful—Securities against, applicable to a Mahomedan state, viii. 588-589.
 Honorary rewards considered, ii. 217-218.
 Honorary satisfaction to persons injured by insults, &c., i. 377-381.
 Honour—The nature of, i. 51.
 — an excuse for obtaining public money for its support, iv. 439.
 — Destructive and mischievous things done in the name of, iv. 438.
 — the motive with many for respecting an oath, vi. 312.
 — among thieves—Mischievous nature of the propensity termed, i. 428; iv. 225; vi. 265-266.
 — Protection for injuries against, i. 542.
 — Remedies for offences against, i. 381-382.
 — Offences against, as a subdivision of the Penal Code, iii. 164-165.
 — Professions of, by individuals—Danger of giving credit to, iii. 526.
 — Motive of. Employment of, as a preventive of crime, i. 563-564.
 — Loss of, as a punishment, i. 463. *See* Moral Sanction.
 — Employment of the term, in discussions relative to war—a fallacy, ii. 437.
 Honour—Factitious. Nature and influence of, in connexion with the Constitutional

Code, ix. 78-92. Difference between such honour and dignity—The latter a quality real or presumed, 78. Signs of honour—visible and audible, ib. Personal and successional, ib. Analysis of different kinds of signs of honour, in connexion with property, privilege, power, &c., 78-79. Illustrations in the history of the Peerage, the establishment of Baronetage, &c., 79. The clergy, contrary to the dicta of their religion, have caused factitious honour and wealth to be worshipped, 79-80. Vicarious honour conferred on one person for the services of another—compared with vicarious punishment, 80-81. Produce inequality—inequality in power, virtue, talent, &c., insuperable, but in this gratuitous, 81. The most illogical instance is family pride, 81-82. Honours viewed, not as certificates of respectability but orders for respect, 82-83. Privileges in the usual intercourse of society, conceded to the holders of the honours, 83. Claims on the good opinion of the world, ib.; give the individual not only the reputation of wealth and power which he does possess, but of ability which he does not, ib. The influence compared to superfluity, 83-84. The effect of adulation, 84. False inference that they are necessary in civilized society, because they may have conduced to order and government in a barbarous, ib. The evils of the distribution of undeserved honours, as an injustice to the public and to those who really deserve them, 85. Productive of corruption, 85-86. An excuse for depredation for money to support the dignity, 86. Evil, in the creation and propagation of delusion, and the consequent mental debilitation, ib. Aggravation of inequality, ib. Usurpation of respect due to age, 86-87. Evil in reconciling people to the spectacle of injustice, 87. Spectacle of waste, ib. A rivalry of the inhabitants of different nations—attempts to impose on each other's ignorance in magnifying their own relative rank, ib. A fraud upon the public—demanding and obtaining respect where it is not due, 88. Great extent of depredation produced for the support of the lustre, &c. of thrones, 88-89. Evil to a country of its chief magistrate having a high title—king or emperor, ib. Factitious distinctions, unapt as rewards for public services, as not graduated to their amount, 90. Considerations as to how far services may be duly rewarded by honours, 90-91. Ample notification of services rendered, ib. Register of meritorious service, 91. Principles of economy in the distribution of praise, ib. Means in the possession of the public for preventing itself from being defrauded of respect, positive and negative, 91-92. Sarcasm, caricature, and lampoons, 92.

Honours given as rewards—Elements of, ii. 194-195.

— Method of conferring, by the Constitutional Code, compared with those in use, ix. 267-269.

— Evil of a profuse distribution of, and reasons for husbanding, ii. 200-201.

Honourable—Application of the term to legislatures criticised, iv. 438.

Hood—Admiral, noticed, x. 101.

Hooker—Richard, noticed, iv. 483.

Hoole—John, noticed, x. 184.

Hope of gain—Effect of, on testimony, vi. 158.

Horded money—Plan for interest accruing from, through Annuity notes, iii. 145.

Horner—Francis—Letter from, with information about Mexico, x. 446-447.

— — noticed, x. 428, 443, 582.

Hornsey—Case of the queen against the inhabitants of, cited, vii. 492 n.

Horse—Similarly of sale of, adopted in exposure of usury laws, iii. 14-15.

Horse—Master of the—allusions to the costliness of the establishment, ix. 29.

Horse-Artillery—Duties and relative efficiency of, ix. 399.

Horseley—a fellow-student of Bentham's, x. 41.

Hoskins—Mr, account of, x. 425-426.

Hospitals—Numerous, an evil, ii. 211.

— Limits to the encouragement of, i. 566 n.

— Application of the Panopticon plan to, iv. 37, 61-62.

— Establishment of, in central towns, ii. 257.

— under the inspection of the Health Minister, by the Constitutional Code, ix. 444.

— naval and military—The costliness of the establishments of, ix. 375-376.

— naval and military—Propriety of, considered, ii. 219.

Hospitality—most practiced where most necessary, i. 542.

Hospitality-exercising Function of the Local Headman, by the Constitutional Code, ix. 617.

Hostility—Security from, as an end of the Constitutional Code, ii. 270-271.

Hôtel des Invalides—Appropriate decorations of, ii. 219.

House—That a man's, is his castle, a foolish and mischievous saying, ii. 511 n.

House of Correction. *See* Hard Labour; Prison Discipline.

House of Lords for Spain—Tract on the proposed, viii. 468-470.

Houses of Peers and Senates—Address to Citizens of France against, iv. 419-450. *See* Peers.

House (of Commons)—Number necessary to constitute a—Remarks on, ii. 325.

— Call of the—Nature and effect of, ii. 325.

— Whole—Committees of the—Rationale of, ii. 373.

House (of Commons.) *See Commons: Legislature: Lords.*

Houses (Legislative)—Division of legislative bodies into two, considered, ii. 307-310.

Houses—Method of indicating and recording designations of, for purposes of determining voters, iii. 583-588.

Houses—Penitentiary and of Industry—Application of the Panopticon system to, iv. 37-248. *See Panopticon.*

Householder suffrage compared with virtually universal, iii. 464, 467 n, 470.

— a compromise which the author would make, iii. 533, 599.

— *See Franchise: Suffrage.*

Householders—Definition of, for the purposes of suffrage, iii. 581 n.

Howard—Defects in his plan of a Penitentiary-town considered, iv. 85.

— Connexion between physical and moral purity noticed by, iv. 158.

— His prison dietary criticised, iv. 154.

— His plans defective in not affording sufficient protection from mobs, iv. 106-107.

— His plan of having cell windows high up and unglazed, combated, iv. 96.

— quoted against death-punishment, i. 531.

— Tribute to the services, labours, and disinterestedness of, iv. 121.

— casually noticed, i. 426, 432 n; iv. 3, 9, 10 n, 13 n, 19, 22, 25, 32, 52, 61, 71, 76, 84, 98, 119, 136, 137, 143, 157, 164; viii. 419; x. 130; xi. 98, 108.

Howard's Act for the liberation of prisoners against whom no bill is found—nullification of, by the judges, v. 179-180.

Howe—Sir William—Anecdote about, x. 527.

— — — Mention of, x. 260.

Howlett—Mr, on the Poor—Reference to, on vital statistics, viii. 410 n.

Hudibras—Estimate of the poem of, x. 583.

Hulks—The. Contract management illustrated in, iv. 133-134.

— Dissemination of crime from, xi. 120.

— Punishment of the, i. 439.

Human actions in general, analyzed, i. 35-40. Tendency causes demand for punishment, 35. Determined by consequences, ib. Intention, and what it depends on, 35-36. Consciousness and unconsciousness, ib. Motive and disposition indicated by an act, 36. Positive and negative acts, ib. Absolutely and relatively negative, ib. External and internal acts, ib. Transitive and intransitive, 36-37. Transient and continued, 37. Continued act distinguished from repetition of acts, and repetition from habit or practice, ib. Indivisible and divisible acts, ib. Simple and complex, ib. Unity of an act, 37-38. Circumstances, 38-40.

Human dispositions in general, analyzed, i. 60-68. *See Dispositions.*

Humanity—Nature of the quality of, i. 53.

— Prejudices regarding punishments, founded on, i. 412.

— How it is pleaded as a reason for excluding self-criminative testimony, vii. 452-454.

— overpowers the sanction of an oath, vi. 311.

— used as a plea for the escape of malefactors on technicalities, vii. 361.

— Falsehoods of, vi. 267.

— Judicial—Popularity gained by displays of, vii. 258-259.

— The requisition of more than one witness, in particular cases, founded on false notions of, vii. 523-525.

— to animals—a feature in Bentham's character, x. 17.

— to animals—Letter to the *Morning Chronicle* in favour of, x. 549-550.

Humann—M., of Brussels—Letter to, xi. 42-43.

Humboldt—noticed, ii. 561, 562; x. 440.

Hume—David. His character as a thinker—dispassionate, acute, and comprehensive, iv. 283-284 n.

— — The first to point out the difference between ideas and impressions, viii. 108.

— — Principle of Utility derived from, by the author, i. 242.

— — Exposure by, of the common confusion in the field of ethics between what is done and what should be done, v. 389; viii. 128 n.

— — Criticism on his Treatise on Human Nature, i. 268-269 n. Demolition of the original contract, ib. Author's obligations to his reasoning, ib.

— — on cause and effect, vi. 237.

— — His appreciation of great minds, ii. 553.

— — A mistake in his history pointed out, ii. 596 n.

— — on reforming taste, ii. 254.

— — noticed or quoted, i. 8 n, 542; iii. 285; iv. 22, 447 n; vi. 240 n; vii. 91; x. 562.

Hume—Joseph, noticed, x. 533, 538; xi. 40, 50.

Humour—Relation of, to pleasure and pain, x. 509.

Humphreys—Mr—His Real property code—Commentary on, v. 387-416.

— — His Real property code alluded to, vi. 203.

Humphries—Mr. Bentham's residence with, at Constantinople, x. 154-155.

Hundred Court—Early existence of the, vii. 234, 371.

— Evidence against a, for compensation in case of robbery, vii. 492.

Hungary. Attempt of Maria Theresa to extirpate prostitution in, i. 546.

Hunger and fear of hunger as designative of motives, i. 197.

Hunt—Henry—Anonymous letter to, recommending him to give up his acrimonious disputes with O'Connell, xi. 5-7.

— — Estimate of, x. 600-601, 602.

— — noticed, iii. 471 ; v. 247, 260.

Hunt—John. The prosecution of, cited, v. 342.

— — noticed, x. 471-472, 531.

Hunter—Captain, Governor of N. S. Wales, quoted on the state of the colony, iv. 180.

Hunter—Dr John, noticed, viii. 148 n ; x. 183.

Hunter—Dr William—Estimate of, x. 285.

Hunting—Cruelty of, i. 562.

— Liberty of, considered, i. 329-330.

Husband—Extent of, and reasons for, the guardianship of, i. 355-356.

— Origin of authority of, over wife, i. 121 n †, 129.

— Offences that may be committed against the condition of, i. 129-131.

— Impediments to wife obtaining relief from cruelty of, ii. 178.

— Responsibility of, for wife, in regard to reparation for offences, considered, i. 386.

— false inference of legitimacy from non-expatriation of, vi. 53-54.

Husband and wife—Exclusion of testimony of, in regard to each other, considered, vii. 480-486. Vexation from sympathy an insufficient ground, 481. So of antipathy, dissension, and danger of perjury, 482-483. Tends to convert the house of every man into a nursery of unpunishable crimes, 484-485.

— — Influence which the connexion between, may have on testimony, vii. 577-581.

— — Principles of the Civil Code regarding, i. 349-358. *See* Marriage.

— — Succession with regard to, i. 335.

— — Law of, should be embodied in a particular code for the use of those who may have occasion to refer to it, viii. 533-534.

— — Questions as to, ranked among complex actions, ii. 81.

Husbandry—Place of in the Chrestomathic system of Instruction, viii. 34-35.

— Stage it should occupy as a branch of education, viii. 15.

— Source of experimental information regarding, in a system of Pauper management, viii. 426.

— Labourers in. Their inability to provide for their families, viii. 442.

Husisson—William, noticed, ix. 293.

Hutchinson—Julius, an early companion of Bentham, x. 14.

Hutchinson's Justice of Peace quoted in favour of Small Debt Courts, v. 24.

Hutton—William, of Birmingham. Letter of, to Bentham, x. 422-423.

— — His account of the Court of Conscience at Birmingham, v. 23.

Hydraulics, defined, and located in the Chrestomathic system of Instruction, viii. 31.

Hydroptic source of motion from the descent of water, viii. 132-133.

Hydrostatics, defined, and located in the Chrestomathic system of Instruction, viii. 30-31.

Hygiastics, or the branches of Art and Science appertaining to health—their place in the Chrestomathic system of Instruction, viii. 35-36.

Hypothetical propositions—Proper collocation of, iii. 269.

— The form of enactive propositions in the statutes, iii. 277 n.

I

Ice-House—Plan of a, for the preservation of fruit, vegetables, &c., x. 346-350.

Idea of an object confounded with its existence, vi. 255.

— how distinguished from impression, viii. 108 n †.

Ideas—Consideration whether they are real entities, viii. 196.

— could not be fashioned, fixed, or communicated, without words, i. 205.

— only presented to the mind by individual objects, viii. 99 n.

— Rules for the classification of, in the mind, viii. 277.

— Immaterial—Process by which they are described by the names of material things, viii. 327-329.

— Like, should be expressed in the same words, iii. 209.

— Concrete and abstract : difference between the respective cognoscibilities of, viii. 26.

— Innate, exploded by Locke, vi. 240-241.

Identification marks on the body—Utility of, for various purposes : prisons, the army and navy, &c., x. 414-415.

— of a party distinguished from that of a witness, vii. 175 n †.

Identity—a fictitious entity connected with relation, viii. 203.

— of Denomination. Imputations founded on, in politics, ii. 416-417.

— and Diversity—Importance of conveying, in nomenclature, viii. 65.

— Systematic nomenclature should provide for indicating, viii. 65-66.

— proved under Roman practice by confrontation, vi. 501-502.

Idiocy—a branch of insanity, vi. 251.

Idioscopic Anthropurgics, or Chemistry—

- Position of, in the Encyclopedical Sketch of Art and Science, viii. 87.
- Idioscopic, or Practical Ethics—Position of, in the Encyclopedical Sketch of Art and Science, viii. 94.
- Idioscopic Ontology, or the general field of Art and Science, with the exception of Metaphysics—Position of, in the Encyclopedical Sketch of Art and Science, viii. 83-84.
- Division of, into Somatology or Somatics, and Pneumatology or Pneumatics, viii. 84.
- Idiosyncrasy—Definition of, i. 27 n *.
- Idiots—Provision for guardianship of, in Despatch Court Bill, iii. 386.
- Idle—Increase of the, an evil, iii. 73-74.
- and Dissolute—Suppression of the, by a right system of poor-laws, viii. 401-405.
- Idleness—Classification of, as an offence, iii. 170.
- Means of discouraging, iii. 68.
- Intellectual instruction a security against the mischievous effects of, viii. 10.
- aids fallacies of authority, ii. 393.
- Effect of, on the ancient Germans, ii. 254.
- Love of, as a cause of crime, i. 539-540.
- not to be legally attacked for its own sake, but as the source of crime, iii. 40.
- Idols—Allegorical. Fallacies of, ii. 448-449. "Government" applied to Governors, "Law" to Lawyers, and "Church" to Churchmen, ib.
- Ignominy—Punishment by, i. 456-458. *See* Moral Sanction.
- Ignominious Punishments—Simple, examined, i. 463-467. Their variability, 463-464. Exemplarity, 464. Frugality, ib. Remissibility, ib. Cases in which the public opinion does not correspond with the legislator's duty, 464-465. Remedy proposed, 465. Some offences to which the legislator tries to attach infamy in vain—libel, 466-467.
- Ignorance—increases the influence of fallacious authority, ii. 390-391.
- renders popular associations dangerous, i. 577.
- Difficulty of punishing false allegation of, vi. 244.
- Delusions and superstitions attendant on, viii. 12-13.
- Ignorance of law—kept up by those who punish it, vi. 519.
- Illegal—Absurdity of the term, for censuring bad laws, i. 231 n *, 288, 412; ii. 403, 493-495; vi. 180; vii. 382-383, 462.
- Illegitimacy—Considerations regarding legal declarations of, i. 473.
- Ill humour—Nature of, i. 53.
- Ill will, ill humour, &c.—as designative of motives, i. 203.
- Nature of, i. 53.
- Ill will—Inference of disposition from an act caused by, i. 64.
- What punishment tends to reformation in crimes of, i. 93-94.
- Imaginary wrong—Persuasion of, furnishes extenuation, i. 165.
- Imagination—Nature of, as one of the human faculties, viii. 74 n.
- makes the first step in invention and discovery, viii. 76.
- a faculty necessary to the inventor—not to the learner or teacher, viii. 76.
- as a mental operation in connexion with Logic, viii. 225-226.
- The pleasures of the, i. 18.
- The pains of the, i. 20.
- Connexion of, with pleasures and pains, i. 207.
- How to strengthen the impression of punishments upon, i. 549-550.
- Effect of, on evidence, vi. 18.
- an intellectual cause of incorrectness in testimony, vi. 254-256.
- Ordinary and extraordinary work of the, distinguished, vi. 256 n.
- Value created by, to be considered in indemnification, i. 374-375.
- Methodisation applies to useful purposes, viii. 261.
- Imaginative faculty—Application of methodisation to the assistance of the, viii. 272-273.
- Imbecility—How far the evils of judicature attributable to, vii. 210-211.
- as affecting evidence—Definition of, vii. 385.
- Mental—Impropriety of holding it as a ground for the exclusion of evidence, vi. 105; vii. 427-432. Difficulty of drawing a line, 427. Method of examining children, 428-432.
- ground for suspicion in testimony, vi. 111.
- Immaterial ideas. Description of the process by which they are expressed through the language applied to material ideas, viii. 327-329. *See* Entities—Fictitious.
- Immorality—Engaging a man in, blunts him to the nature of, vii. 205.
- on the part of a witness—its effect on testimony. *See* Improbability.
- Immoveable property—Importance of contracts as to, peculiarly demands registration, vi. 577-578.
- Immoveable Stock-book—in the system of official registration in the Constitutional Code, ix. 237, 242, 243-244.
- Immutability—Clauses of, in Constitutions—declaration of infallibility, and prohibition of improvement, viii. 483.
- of laws and of articles of faith, compared, v. 210.
- Impartiality as a quality in evidence, vi. 211-212.

Impassioned as a characteristic of appellatives, i. 209-210.

Impeachments—Proposal to give the jurisdiction in, to a Court of Lords' Delegates, v. 184.

— no remedy for official wrong, as shown in the instances of Hastings and Melville, v. 504.

Imperation—Power of, essential to sovereignty, ii. 540.

Imperative law—what? i. 151.

Imperative mood—Explanation of the Psychological state of which it is the sign, viii. 336.

— Use of, involves a sentence or proposition, ix. 337.

Imperfection—Bodily, as a circumstance influencing sensibility, i. 23.

Impertinence—a designation of irrelevant evidence in equity, vii. 363-365.

Impey—Sir Elijah, censured, i. 6 n^a.

Impey's Common Pleas quoted, vi. 185.

Impignoration as a means of giving counter-security to a defendant, ii. 105.

Import—Unsteadiness in, as a defect in laws, iii. 247.

— of words—Questions concerning, confounded with questions as to facts, in theories as to impossibility, vii. 76-82.

Imports—Prohibitions and restrictions on, discussed, iii. 88-100.

— Taxes on—Incidence of, iii. 40.

— Taxes on rival—Their incidence, iii. 65.

— from Spain—Tables of, iii. 101.

Importance of a fact—Vivacity of the impression of it depends on, vi. 252.

— What constitutes, in a law-suit, iv. 347.

Importation—Relation of, to national wealth, iii. 39.

— Relation of, to increase of wealth, iii. 39.

— Agreements against—Operation the same as that of prohibition, iii. 65.

Impossible facts distinguished from verbal contradictions, vii. 79, 80-81.

— *per se*, distinguished from impossible *si alia*, as in alibi evidence, vii. 111-113.

Impossibility—Nature of the expression, as the name of a fictitious entity, viii. 211.

— Impropriety of the term for judicial, though necessary for colloquial purposes, vii. 80.

— resolvable into disconformity with the established course of nature, vii. 83-84.

— Illustration of the theory of, vii. 85.

— Psychological, considered as disprobative of a fact, vi. 47.

— Character of, improperly attached to psychological facts, vii. 113-114.

— See Improbability.

Importors—Utility of a Treatise on Projects, exposing the operations of, iii. 51.

Importor terms—Use of, as fallacies of confusion, ii. 438-439.

Imposture—Instances of, vii. 210.

Imposture—Instructions to guard the public against, recommended, i. 553-554.

— Knowledge a preservative against, and facilities for detecting given by enlightenment, i. 568; viii. 13.

Impounding of witnesses' notes by judge—Reference to practice of, vi. 387.

Impracticability—Physical and prudential, distinguished, vi. 328 n⁺.

— Allegation of, always thrown in the way of one who has anything good to propose, viii. 22.

Imprescriptable rights—Fallacy and mischief of the expression, ii. 500-504.

Impression—How distinguished from idea, viii. 108 n⁺.

Impressiveness—Rules for obtaining, in collocation, viii. 316-318.

— or force, as a property desirable in language, viii. 191, 307, 310.

Impressment of seamen—Reference to the necessities which may justify resort to, ix. 404.

Imprisonment as a punishment, i. 420-429.

May be for forthcomingness or compulsion, 420. Proper qualities of, in latter case, 421. Negative evils inseparable from imprisonment, ib. Accessory evils commonly attendant, with their remedies, 421-423. Fees, 423-424. Efficacy with respect to disablement, 424. Frugality, ib. Incapable of equality, ib. Divisibility, ib. Exemplarity, ib. Simplicity, 424-425. Discipline as applicable to, 424-429.

See Prison discipline.

— viewed as a disabling punishment, i. 404.

— viewed as a subsidiary punishment, i. 518.

— Its variability as a punishment, i. 403.

— Reason for employing, as a punishment for corporal injury, i. 167.

— General scheme of, with reference to debtors and different grades of criminals, i. 429-431.

— Provisions for, in Despatch Court Bill, iii. 382-388.

— Unthinking employment of, in Technical procedure, ii. 169.

— in relation to punishment and forthcomingness, i. 393.

— Ordinary evils of, obviated by arrangements in Pauper management, viii. 418-419.

— as a means of giving counter-security to a defendant against oppressive proceedings, ii. 108, 110.

— Illegal—Remedies against, i. 370.

— Arbitrary—Securities against, adapted to a Mahomedan state, viii. 586-587.

— for want of compliance with orders of court—should not be indefinite, but for renewable periods, iii. 359.

— Perpetual—Advantages of, over death-punishment, i. 450.

Imprisonment—Quasi, as a punishment, i. 431-435.

— Secrecy of, how far safe, iv. 23.

— Solitary, how far justifiable, to keep an accused person or witness from intercourse and tampering, vi. 450-451. *See* Confinement.

— Wrongful—Considerations as to, in the transplantation of laws, i. 173-174.

Imprisonment for debt—how created by the division of jurisdictions, for self-interested purposes, v. 491-497; vii. 382 n.

— — — considered, vi. 176-183; vii. 381.

Inaptitude of, as an instrument of compulsion, vi. 176-177; or as an instrument of punishment, 177. Its needlessness, 177-178. True end of, 178. Produced by judicial mendacity and usurpation, 178-179. Unfitness of the affidavit, 179. Puts exclusion on evidence, 179-180. Errors committed by advocates for its abolition, 180-181. The Scottish system of *cessio*, 181-182. Proper course to be adopted on occasion of insolvency, 182-183.

— — — Alteration of the law of, vi. 334 n.

— — — Exclusion of evidence involved in, vi. 135-136, 179-180. Course prescribed by natural procedure as to, contrasted with that adopted by technical, 135-136.

— — — Evils of the English system of, casually noticed, ii. 63.

— — — Substitution of attachment of goods for, and principles that should regulate the attachment, iii. 354-356.

— — — Exceptions necessary in abolition of, iii. 352 n.

Improbability—Dependence of, on the extent of the knowledge of nature possessed by the individual experiencing it, vii. 91-98.

— resolved into disconformity with the established course of nature, vii. 83-84.

— as a cause of suspicion in evidence, vi. 153-154.

— Decision on the sole ground of, is not without evidence, vi. 278.

— of a fact considered as counter-evidence, vi. 45-46, 240.

— considered simply as a particular case of counter-evidence, vii. 98-105.

— Mathematical distinguished from ordinary, vi. 243-244.

— as regards psychological facts, considered, vii. 113-115.

Improbability and impossibility—Nature of, and relation to one another, vii. 76-79, 81. Not qualities of external phenomena, but of the degree of persuasion in the mind, ib.

— — — the belief that they are intrinsic to things, considered, vii. 103.

Improbable facts—The necessity of disbe-

lieving, though they should turn out to be true, vii. 98, 104.

Improbability as a means of corrupting evidence—definition of, vii. 385.

— no good ground for excluding the testimony of a witness, vi. 106; vii. 406-420.

— in the shape of perjury, no good ground for excluding the testimony of a witness, vii. 406-412. The most plausible ground, 406. Good ground of suspicion only, 407. Almost always attended by subornation, 408. Exclusion intended as punishment to the witness, falls on parties, 409. Inconsistencies of English law, 403-412. Record amissing, 409-410. Restorative, 410. Affidavit evidence, ib. Diversity of opinion among judges, 411-412.

— in other shapes than perjury, no good ground for exclusion of the testimony of a witness, vii. 412-415. Impossibility of estimating the character of the criminal from the crime, 412-413. Accomplices admitted, though the most dangerous of all, 414. Admission where the mischief of misdecision is the greatest, 415.

— as a cause of untrustworthiness in testimony, vii. 585-591. How far probity of party a protection, 585. Habit to be looked to rather than individual offences, 586. In the case of crime, influence of collateral circumstances to be looked to, ib. Judge should be prepared for anomalies, 587. Peculiar strength of suspicion where mendacity is the kind of improbability, 587-589. Circumstances which aid the mendacity-restraining sanctions, 589-591.

Improvement—Arguments employed for stopping the progress of, ii. 6-7.

— Plans of. How met by expressions of Theoretic, Utopian, &c., ii. 457-462.

— of a code of laws—Rules regarding the, iii. 209-210.

Improvements in science—Impediments to, in reverence for great names, viii. 177.

— In what cases property in the thing improved should be created by, i. 328-329.

Impunity—Effect of, in nourishing crimes, i. 396.

— The hope of, nourished by the absence of compensation to sufferers by offences, i. 372.

— where punishment threatened—Evils of, i. 324.

— a consequence of death-punishment when unpopular, i. 450, 526-527.

Imputation—Atrocity of an, how far a ground for incredibility, vii. 115-117.

— on the character of a witness—how far to be sanctioned, vii. 60.

— Punishment for, when false, ii. 279.

Imputations, as fallacies used in political discussion, ii. 414-417. Bad design, 414-415. Bad character, 415. Bad motive, 415-416. Inconsistency, 416. Suspicious

- connexions, 416. Denomination corresponding with that of men supposed to have done evil, 416-417.
- Imputations on men in office—License for, salutary, though a portion should be unjust, ii. 425-426, 451-452. The unjust generally defeated in the end, 426.
- Inaccuracy in transcripts—forms it generally assumes, vii. 142-143.
- Inaction—as an inconvenience in legislative assemblies, ii. 302.
- Inalienable—necessity for precision in the employment of the word, in settlements, &c., v. 403-404.
- Inaptness of expression, vi. 253-254. *See* Expression—Inaptness of.
- Inaugural declaration by members of a legislature, ix. 124-125. *See* Legislature.
- — Legislator's, in Constitutional Code, ix. 198-204. Purpose—not for subjecting the legislator to punition responsibility, but to enable the Public-opinion Tribunal to act, 198. Provision for the manner in which he is publicly to read it, 198-199. Provision for his dissenting from any part of it, 199. Ends aimed at by—The greatest-happiness principle as the main end of government, and the subsidiary ends tending to it, 199-200. Guarding against the appetites of factitious respect, &c., 200. To keep in view economy, counting all pay additional to what will procure the service, waste, ib. Abjuration of punishment for differences of opinion, 201. Notoriety of the law to all, ib. To keep in view the removal of all impediments to cheap and speedy justice, 201-202. Impartiality in using the patronage of the legislature, 202. Justice and beneficence in national dealings—no war, except for self-defence or pecuniary damage, ib. No distant dependancies, ib. The prospective evil of all efforts to support honour, glory, dignity, &c., at the expense of justice, benevolence, &c., 202-203. Impartiality in the exercise of power, 203. Assiduity, ib. Subordination to the constitutive authority—The people, ib. No unnecessary encroachments on subordinate authorities, ib. Deception and delusion, and all forms of insincerity abjured, ib. Arrogance abjured, 204.
- — of Judges and other officials of the judicial establishment in the Constitutional Code, ix. 532-535.
- Incapacitation for offences—not accomplished by the transportation system, iv. 183-199.
- Incapacities—Punishment by, in ecclesiastical courts, i. 514-516.
- Incendiarism—frequency of the crime in penal colonies, iv. 220-222.
- — Dangerous nature of the crime of, iv. 222.
- — Application of analogical punishment to the crimes of, i. 407.
- Incest—Principles of the Civil Code regarding, i. 350-352.
- Incidence of punishment, i. 475-490. *See* Punishment—Proper seat of.
- Incidental Complaint-Book, in the Judiciary Establishment of the Constitutional Code, ix. 500-502.
- Incidental decision—Evidence may with propriety be made conclusive for, vii. 547-549.
- Inclination—Bent of, as a circumstance influencing sensibility, i. 24.
- Inclinations—proper subjects of the attributes good and bad, &c., i. 216-217.
- Income—Definition of, iii. 36 n†.
- — converted into capital through taxation, iii. 44.
- — Effect that taxes on, may have on capital, iii. 76.
- — Calculation of the average, of the whole inhabitants of the empire, v. 233.
- — Money increased beyond the ratio of commodities is a tax on, iii. 45-70.
- — Calculation of, for subsidiaries to pecuniary punishment, i. 518.
- — National, of Britain—Estimate of, iii. 134, 141.
- Incomes—Official—opinion that they are insufficient, and should be eked out by pensions, controverted, v. 307-308.
- Income-Tax—Nature of an, ii. 582.
- — Examination for—Oath only administered in, if found necessary, vi. 434 n.
- Incompetent witness—the expression criticised, vi. 147.
- Incongruities in the method of extracting evidence in English law, vi. 465-499.
- — in the method of extracting evidence in Roman law, vi. 499-501. *See* Extraction.
- Inconsistency the chief instrument for detecting falsehood, vii. 590.
- — Imputation of, a fallacy used in debate, ii. 416.
- Inconsistencies—Psychological improbabilities called, vii. 114.
- Incorporative unions between States—The principles of, ii. 405-408.
- Incorporation. *See* Corporation.
- Incorporeal rights—origin and use of the expression, i. 109.
- Incorrectness—Modes of, in testimony, vi. 244-247. Depend either on the will or on the facts, 244. Three sorts of falsehood—positive, negative, and alleged ignorance, ib. Difference between fact and circumstance, 245. Falsehood in circumstance and falsehood *in toto*, 245-246. Circumstantial falsehood, 246-247.
- — in testimony checked by publicity, vi. 355.
- — and incompleteness of evidence—the source of misdecision, vii. 385.
- Incredible—No facts universally recognised to be, vii. 80-82.
- Incredibility—How far the atrocity of

- an offence a ground for, vii. 115-117.
- Incredibility—Modes of disconformity in nature creating, vii. 84-91.
- Inculpativ acts as separate offences, vi. 45.
- evidence. *See* Self-dis-serving ; Self-inculpativ.
- but not criminative suits—Demand paper for, ii. 67-68, 70-71.
- Incumbrance—Committee of the House of Commons takes three months to comprehend the meaning of the word, in reference to real property, iv. 501.
- Indebitatus assumpsit*—Nature of the action of, vii. 549-550.
- Indemnity to persons rendering services, ii. 234.
- Indemnity to sufferers by offences. Principle of, i. 387-388, 578-580. *See* Satisfaction.
- The principle of, for essential services, though voluntarily rendered, i. 340.
- to officers whose sources of emolument are interfered with, ii. 251-252.
- to the holders of places and pensions abolished, i. 320-321.
- Indemnity—Acts of, are to cover proceedings which ought to be punished, or ought to have been sanctioned by previous legislation, ix. 390-391.
- Independence—Universal—impossible, i. 362.
- Misplaced—Political evils of, iii. 452, 522.
- Kind of, that is dangerous to the community, ii. 394.
- Kind of, that should characterize representatives, iii. 454-457.
- Character for, obtained by the utterance of fallacies, ii. 480.
- in the case of Judges, considered, iv. 362-363. Independence, as against individuals, good—as against the public, bad, ib. Latter, despotism, ib.
- Independent Whig*—Case of, for libel, cited, v. 112.
- Index—Nature and composition of an, for a code of laws, iii. 193.
- Indices to the Journals of the House of Commons—Circumstances connected with formation of, ii. 228-229 n.
- India—Conduct of Britain to the natives of, i. 6-7 n * ; vii. 196-197.
- Inapplicability of British institutions to, i. 185-188.
- India—British. How far the relief of, from British control would be advantageous, v. 268-269.
- — Protection gained by the inhabitants of, iii. 58.
- — Whether Jury trial suitable for? i. 178-179.
- — Letter to the author on introduction of Jury trial in, ii. 182-185.
- India—British. Hints as to how Jury trial might be made use of in, ii. 137-138 ; x. 468.
- — High feeling among the Sepoys of, ix. 421-422.
- — Military discipline a means of amelioration of, ix. 418.
- — Effect that would be produced by the native money of, being invested in British Government paper, iii. 146.
- — Company's marks of, held evidence of contents in China, iii. 146 n †.
- — Remarks on the Governorship and Council of, i. 571-572 n, 572-573.
- — Letter from Colonel Young on the state of, under Lord William Bentinck, xi. 7-9.
- — Letter to Rammohun Roy on the state and improvement of, x. 589-592.
- Indications respecting Lord Eldon, including History of the pending Judges' salary-raising measure*, v. 348-386.
- Indicative Evidence, defined, vi. 214.
- — Importance of receiving, ii. 59.
- — as distinguished from appropriate, ii. 57-58.
- — Importance of admitting makeshift as, vii. 164-165.
- Indictment—Procedure on, vi. 467.
- Narrative told several times in, vi. 455.
- Procedure by, in misdemeanour, vi. 474-476.
- Particularity as to time and place in, vii. 38.
- Strictness of construction of, productive of pardon to criminals, ii. 14.
- Proceedings by, in the technical system, characterized, ii. 171.
- in the King against Edmonds—Untenability of the, v. 239-251.
- in the King against Sir Charles Wolseley and Joseph Harrison—Untenability of the, v. 253-261.
- Indigence as a cause of crime, iii. 227.
- Means of preventing the crimes arising from, i. 543-544.
- Protection of, as an alleged reason for the Usury Laws, discussed, ii. 7-8.
- Support of. Principles on which it should be founded, i. 314-316.
- Indigence Relief Minister—Functions and powers of, in the Constitutional Code, ix. 441.
- Support of. Siey s's doctrine as to, considered, ii. 534.
- Indigent Suitors—Appointment of Eleemosynary Advocate for, iii. 342 ; ix. 577-579.
- Indirect means of preventing crimes, i. 533-580.
- Indirect Taxation. The only kind that is voluntary on the part of the taxed, ii. 518.
- Indispensable Evidence—Doctrine of, ope-

- rates as an exclusion of evidence, vi. 115.
See Exclusion; Formalities.
- Indistinctness as an imperfection in testimony, vi. 280.
- Causes and adjuncts of, in testimony, vi. 425-426.
- Individuals—The good of, considered as the real objects of the laws, i. 321.
- Offences against, distinguished from others, i. 97.
- Injury to, is injury to the public, ii. 252.
- The positive evils of judicature not perpetrated by, but by the system, vii. 212-213.
- Individual management—Superiority of, to corporate, iii. 571; iv. 125-134; v. 17-18; vi. 557-558.
- Individual-responsibility principle—The, in public offices, explained, ix. 250.
- Individuation, or exposition with relation to individual subjects—its nature, viii. 243.
- Importance of, with regard to the subjects of contracts, iii. 177-178.
- Indolence—Nature of, i. 55.
- Ailness, &c., as designative of motives, i. 204.
- a source of prejudice, ii. 478.
- one of the causes of the profession of dread of innovation, ii. 418.
- an impediment to the exposure of offences, viii. 578.
- a cause of exclusion of evidence, vii. 391.
- Remedy against, in workhouses, by the earn-first principle, viii. 383.
- Indolent—Judge may be, in absence of publicity, vi. 355.
- Indorsation—Official, authentication by, vii. 178.
- Industrious—The. Their interest in preserving the existence of government, ii. 424.
- classes—would be the greatest sufferers by a general partition, iii. 608.
- Industry—Character generally given to the motives producing, i. 214.
- Security and freedom all it requires of the Government, iii. 35.
- How far it should be encouraged by refusing relief to poverty, i. 314-315.
- Impediments to the creation and continuance of large masses of property should not be so stringent as to interfere with, ix. 34.
- Effect of a general equalization of property upon, i. 360.
- The destruction of, involved in attacks on property, i. 310-312.
- Free, more productive than that of slaves, i. 345.
- with reference to punishment and reformation, i. 439-441.
- Invigoration of, through instrumentality of Panopticon, iv. 39.
- Industry Houses—Establishment of, as a part of Pauper management, viii. 369.
- The system of, viii. 372-439. *See* Pauper Management.
- The collateral purposes to which they may be applied enumerated, viii. 371.
- Application of the Panopticon to, iv. 37-248.
- Inebriety as a main cause of crime and non-reformation in penal colonies, iv. 230-235.
- Inefficaciousness—renders a punishment unmeet, i. 397.
- Inequality—a natural condition of mankind, i. 361.
- Infallibility—human—Remarks on, vii. 388.
- The assumption of, an incident of adopting articles of faith, v. 209-210.
- claimed by the Church of England, v. 228-229.
- Infamy—Punishment by, i. 458 n. *See* Moral Sanction.
- When punishments ought not to embrace, i. 404.
- Extent to which it may do good in punishments, i. 420.
- Where it should apply to the offence, not the individual, i. 431.
- as a punishment—Motives which have dictated, vii. 409.
- How far it has relation to the nature of the offence, vii. 412 n. †.
- How it may be made a security for the trustworthiness of testimony, vi. 284.
- of attesting witness makes his hand proveable, vii. 190.
- Imputation of, against those who fail to prove their charges against official delinquents, criticised, ii. 429.
- Infancy as an extenuation of an offence, i. 79.
- Infant—Administering an oath to, vii. 428-429.
- Testimony of, should not be excluded, vii. 427-432.
- Infants—Guardianship of. Principles of the Civil Code regarding, i. 347-348.
- Infant mortality—Reduction of an anticipated collateral advantage of a good system of Pauper management, viii. 421-424.
- Infanticide—False views of the criminality of, i. 80.
- Infantry as a branch of the defensive force, ix. 349.
- Infection—Risk of, in prisons, obviated by Panopticon plan, iv. 45-46, 119.
- Inference—False. Effect of a, vi. 293.
- The necessity of, a characteristic of circumstantial evidence, vii. 2.
- Inferences of judge-made law, vi. 53-57.
- Inferential entities. *See* Entities.
- Inferior courts—Extinction of, by the higher in England, vii. 234-236.
- Infinite and finite—No medium between, vi. 224.
- Infirm—The. Appropriate additional com-

forts to, under Pauper management, viii. 433.

Infirmity in a Panopticon Penitentiary—Accommodation for, considered, iv. 78, 119.

Infirmaries—Proper adaptation of, to prisons, iv. 24-25.

Informative circumstances—Nature of, in connexion with evidence, vii. 5.

— Application of, to preparations, attempts, declarations of intention, and threats—as evidence of delinquency, vii. 21-24.

Infirmity—Points of, common to makeshift evidence, vi. 59.

Inflections—Exposition, by the tracing of to their roots, viii. 245.

— Paucity of, gives simplicity and force to language, viii. 310 n.

— Effect of the multiplicity or paucity of, on a language, especially with relation to its adaptation to a treatise on Universal Grammar, viii. 341-342.

Influence—The author's early ignorance of the meaning of the term, i. 248.

— described as corruption under another name, iv. 440-441.

— Effect of secrecy of voting in destroying bad, but leaving effect to good, ii. 369-370.

— Uses of the expression, in political discussion, ii. 438-440. Of the crown, ib. Of will on will, as distinguished from mind on mind, ib.

— of the crown—represented as a cause of, instead of an obstacle to good government, ii. 467.

— of the crown. False views formed under the notion of, ii. 472.

— Corruptive. Means and instruments of, in elections, examined, iii. 476-482.

— Official. Reduction in the amount of, no reason for tolerating any portion, v. 323-324.

— Secret. Its efficacy in promoting the interests of individuals to the sacrifice of those of the public, iii. 97-98.

— Undue—Means of guarding against, in Parliament, iii. 454-457.

— of time and place in matters of Legislation, i. 170-194.

Influences—the proper distinguished from the improper, iii. 448-449.

Information—Political. Benefit of propagating, iii. 474.

— Self-notificative. Extraction of, from litigant, ii. 43.

— Secret—admission of recommended, i. 574-574.

Information—ex-officio—Tyranny exercised under, iii. 417 n.

— Prosecutions for libel by, noticed, i. 466.

— Procedure by, animadverted on, vi. 467-468; vii. 470, 496-497, 512.

— tolerated, because grand juries obstruct justice, vi. 375, 473.

Information—Mendacity-serving *See* Mendacity-serving Information.

Information-elicitative function of ministers, by the Constitutional Code, ix. 263-264.

Informative—Officially, function of ministers, by the Constitutional Code, ix. 260-263. *See* Ministers.

Informers—Evils suffered through, have proceeded not from their immorality, but the badness of the laws, vii. 592.

— Law does not sufficiently encourage, i. 559, 564; vii. 406, 490.

— Evil effects of the prejudice against, and proposed remedy, i. 465; ii. 197.

— Danger from the prejudice against, iv. 226.

— are the best prosecutors, especially if eye-witnesses, and should not be suppressed by sole power of prosecution being in a public officer, iv. 394-395.

— The best means of procuring, as prosecutors, iv. 398-404. Two obstacles—individual enmity and odium, 398-399. Remedy in secrecy, so long as no charge of calumny to expose, 399. Prejudices against secrecy have arisen where it is used to hide, not good but bad laws, ib. Whether a case of calumny so made out, that pursuer should be unveiled, is for judicial decision, ib. Origin of the odium in vulgar errors created by bad laws, 400. Trouble and expense where function of prosecutor severed from that of informer, ib. Indemnification and costs, 401. Not sufficient inducement, ib. Advantage of the plan of simply paying for information, 402. When the informer bound to prosecute, his stake in the result and consequent inducements to false accusation are increased, 402-403. Hardship of heaping additional injury on one already injured, ib. Adoption of means of making the service of the law honourable, 403-404. But then the laws must be such as it is not dishonourable to make, 404.

— Public. Provisions for obtaining information from, in the Plan of Judicial Establishment proposed for France, iv. 387.

— Proper principles of rewarding, so that they may not have temptation to excite to crime for the sake of the reward, ix. 573-575.

— Considerations as to, with respect to public and private prosecutors, iv. 387-406. *See* Prosecutors.

— restrained by the punishment of death, i. 526.

— Rewards to, considered, with the prejudices against them, and the causes, ii. 222-223.

Infortunium, according to Roman law, i. 45.

Ingenhousz—Dr, noticed, x. 265.

Ingram v. Mitchell—Case of, vi. 458.
 Inheritance—Proper principles of, i. 334-336.
 Initial Sketch of the Procedure Code, ii. 178-181.
 Initial meeting. *See* Meeting—Preliminary.
 Initiative of a law as distinguished from the consummative—open to the public at large, iii. 321-324.
 — The. Arrangements as to, in Legislative Assemblies, ii. 350-352.
 Initiatory application on constitution of a pursuer, ii. 63-64.
 Initiatory examination of parties for purposes of proposed Despatch Court, iii. 413-418.
 — of parties in proposed Despatch Court—Reasons for, iii. 306.
 Initiatory hearing, in Procedure, ii. 62-74.
 Injunction in Equity—Nature of, vii. 299.
 — Delay in proceedings on, vii. 380.
 — Absence of substitutes for the process of, at common law, shows the want of codification, v. 486-487.
 Injuring—Methods of taking away the physical power of, i. 534-536.
 Injurious waste—Specimen of a section of the Penal Code regarding, iii. 175-176.
 Injuries—Simple corporal. Legislation as to, in specimen of Penal Code, i. 164-168. Definition, 164. Explanations, ib. Punishment, ib. Aggravations, 164-165. Extenuations, 165-166. Explanations, ib. Commentary of reasons for the different provisions, in the form of question and answer, 166-168.
 — Simple corporal—Specimen of a section of the Penal Code regarding, iii. 174-175.
 — Corporeal and mental—Considerations regarding, in respect to the time and place of infliction, i. 173-174.
 — How far preventible by hindering the acquisition of the requisite knowledge, i. 536-538.
 — *See* Crimes.
 Injustice—Real and apparent, distinguished, and evils of the latter shown, ii. 20-21.
 — under technical procedure, matter of necessity; under natural, matter of chance, vii. 324.
 Ink—Evidence of spuriousness from, vii. 182.
 Innkeepers—Imperfectness of existing remedies in disputes with—Proposed arrangements in Constitutional Code, ix. 621-623.
 Inns—under the superintendence of the Interior-communication Minister, by the Constitutional Code, ix. 441.
 — Frugality—Use of, for the poor in travelling, viii. 417.
 Inns of Court—The system of qualifying by commons at, criticised, v. 331-332.

Innate ideas—Law of nature and other fallacies found to correspond with, i. 300.
 Innate propensities the successor to the exploded system of innate ideas, vi. 241.
 Innocence—Presumption of, as regards person accused—Limits of, ii. 513.
 Innocent—Treatment of an accused person as if he were, an absurd doctrine, and the reverse practised, ii. 169.
 Innocent—The. How far they can be saved from the risk of punishment, i. 476.
 — *See* Punishment—Proper seat of.
 — — Rarity of convictions of, vii. 523.
 — — Chance of conviction of, an argument against death-punishment, i. 448.
 — — Punishment of—Actual effects of, ii. 133.
 — — Evils occasioned by precautions in favour of, on false principles, i. 558.
 — — Protection of; dangerous rules of evidence founded on, vii. 522-523, 525.
 — — may be accidentally surrounded by evidences of guilt, vii. 16-17.
 Innovation—Use made of the term, vii. 298.
 — Prejudices regarding, ii. 7.
 — Fallacy of the cry against, ii. 418-420. Absurdity on its face, 418. Existing institutions founded on innovation, ib. Sources—Labour and difficulty of reforms, and sinister interest against them, 418-419. Counter-fallacy, of time being an innovator, by changing the applicability of institutions to their purpose, 419-420. Sinister interests protecting the fallacy—lawyers, sinecurists, contractors, country gentlemen, priests, 420.
 — held in greater abhorrence than perjury by the Universities, v. 227.
 — Blackstone on, i. 234.
 Innovations—Principles on which they should be formed, i. 323-324.
 Inquests—Coroners—Proceedings of, in cases of suicide, i. 479-480.
 — — Findings on suicides by, an instance of the inefficacy of oaths, ii. 41. *See* Coroners.
 Inquiry—Stages of, in suits, ii. 92-94.
 — Courts of—Natural procedure in, vii. 321.
 — Free. The suppressors of, characterized, x. 510.
 — Commissions of—Means of keeping off reforms, iv. 424-425 n.
 Inquiry—Judiciary—Legislation, for collecting evidence as to legislative projects, in the Constitutional Code, ix. 181-188. *See* Legislature.
 Inquisition—Practice of, a popular argument against judicial interrogation of parties, and self-criminative evidence, vi. 345; vii. 455-458.
 Inquisition caused victims to be burnt to avoid the nominal offence of shedding blood, i. 412.

Inquisition—Hints for emblematic punishment from the practice of, i. 549.

Inquisitiveness, pryingness, &c., as designative of motives, i. 199.

Inquisitorial procedure—Nature of, ii. 83, 88.

Insane—Regulations for the custody of the, i. 370.

— Appropriate establishment for the, as a branch of Pauper management, viii. 394-395.

— Custody of. Advantage of Panopticon system for, iv. 40.

— Whether the Suffrage should extend to the, iii. 559.

Insane Paupers—How to obtain facts as to cost of custody of, viii. 362.

Insanity as a circumstance influencing sensibility, i. 25.

— Guardianship in case of, considered, i. 124-125.

— Effect of, in rendering a case unfit for punishment, i. 84.

— Plan for a registration of commencement and termination of, ix. 631-632.

— Declaration of, a subject for registration, vi. 567.

— Finding of, by Coroner's inquests, an instance of inefficacy of oaths, ii. 41.

— Distributive-seeking suits arising out of, ii. 86.

— Intellectual effect of, on evidence, vi. 251.

Insecurity—The evils of, i. 310. *See* Security.

— Real evil of, in its being felt, iv. 359.

— A feeling of, the great source of mischief in bad judicature, iv. 340-341 n.

— The discouragement of, the object of the book of fallacies, ii. 486.

Insincerity—Position of the Church of England tends to nourish, ii. 397.

Insolence—Official—Means of restraining, by public admonitory rules, ix. 43.

Insolveney. Suits as to trusts in contemplation of, reckoned as continuous, ii. 85.

— Adjustment of proposed Despatch Court to procedure in, iii. 428-430.

— Distributive-seeking suits arising out of, ii. 86.

— Consequence of public compensation for the losses by, i. 388.

— as an offence, i. 116.

— Imprisonment gives no remedy against, vii. 391.

— Proper procedure in cases of, vi. 135-136, 182-183.

— A National. The evils of, enumerated, iii. 610-611.

Insolvency and bankruptcy—Factitious distinction between, vi. 180; vii. 383 n.

Insolvents—Application of imprisonment to, i. 429-431.

Insolvent debtors' Act, vi. 178 n.

— court—Defectiveness of, x. 584.

Inspection—Want of, in penal colonies, renders them inadequate to reformation, iv. 175.

— Improvement on the means of securing, in the Panopticon, iv. 69-71.

Inspection galleries and lodge in Panopticon—Necessity for, iv. 80-86.

Inspection-house—The, or Panopticon, iv. 37-248.

Inspection principle in Penitentiaries—The importance of, illustrated from its absence in the American Penitentiaries, iv. 238-240.

— Application of, to the public offices, ix. 327-333.

— in the management of the Chrestomathic school, viii. 48.

Inspective function—The, of ministers collectively, in the Constitutional Code, ix. 257-260. *See* Ministers.

Inspectors—Judicial, as judiciary officers, in the Constitutional Code, ix. 467.

— Special provisions for, in Constitutional Code, ix. 569-570. The public who happen to be present, 569. Classes it is likely to consist of, ib. Functions—may exercise the inspective, interrogative, and commentative, at discretion of judge, 569-570.

Inspector's lodge—Plan of, in Panopticon, iv. 41, 69-71.

Institutions—Meaning of the term, as politically employed, ix. 223.

— how far the fact of their being established a reason for their continuance, i. 179-180.

— Subsisting. Regard to be paid to, in transplanting laws, i. 177-180.

— How far those of civilized nations adapted to the uncivilized, i. 189-192.

— Propriety of criticising, and slowness of the risk they run from censure, i. 230.

— Distinction to be made between the good and the bad in, i. 573.

— for the diffusion of useful instruction, considered in relation to the principle of rewards, ii. 256-260.

Instruction—Uses to be drawn from the power of, i. 567-569.

— Conduciveness of to reformation, in connexion with penal law, i. 500.

— secular and religious, as an object in prison discipline, iv. 122.

— Diffusion of, through instrumentality of the Panopticon Penitentiary system, iv. 39.

— How far, the Panopticon system can be advantageously adapted to, considered, iv. 62-66.

— Popular institutions for diffusion of, discussed, ii. 256-260.

— for expectants of public offices—Consi-

- derations as to, with reference to the provisions regarding it in the Constitutional Code, v. 273-275.
- Instruction—The system of, to qualify for office, by the Constitutional Code, ix. 277-279. *See* Ministers Collectively.
- Chrestomathic system of. *See* Chrestomathic.
- Public—to come under the authority of an Education Minister by the Constitutional Code, ix. 441-443.
- Necessity of, as a means of supplying certain kinds of service, ii. 234.
- derived from attending courts of justice, vi. 355-356.
- of Irish labourers in New York—Proposals for the, x. 500-503.
- Intellectual—General view of the advantages derivable from, viii. 8-16. *See* Learning.
- Public. Circular on, to Governors of United States, iv. 531-532.
- Instructions—Substitution of, for regulations, in statutes, vi. 524 n.
- concerning the probative force of extrajudicially-written and hearsay evidence, vii. 134-137.
- Instructions from the legislator to the judge for estimating the probative force of evidence, vi. 118-119, 151-175; vii. 563-598;—
- — Use of, vii. 563-567. Where there is no good ground for exclusion there may still be for suspicion, 563. No instructions given under existing systems, and why, 564-565. Object and character of those of the author, 566-567. *See* Cautionary Instructions.
- — as to interest in general considered as a ground of untrustworthiness, vi. 154; vii. 567-573. *See* Interest.
- — as to pecuniary interest, vi. 156-160; vii. 573-575. *See* Pecuniary Interest.
- — as to interest derived from social connexions in general, vii. 575-577.
- — as to interest derived from sexual connexions, vii. 577-581.
- — as to interest derived from situation with respect to the suit, vii. 581-584.
- — as to improbity as a cause of untrustworthiness, vii. 585-591.
- — as to the comparative mischief from misdecision as against plaintiff, and as against defendant, vii. 591-593.
- — as to ulterior safeguards against inconvenience from abolition of exclusionary rules, vii. 593-597.
- Instructional matter—Reasons for introducing, in a code of laws, v. 275.
- Instructional part of the Constitutional Code—Nature of, ix. 3.
- Instrument of demand as a substitute for Declaration or Bill in equity, vii. 270-271.
- Instruments—Authentication of, vii. 176-180.
- Forms of, embodied in legislative acts, iii. 595-596.
- of procedure corresponding to the operations performed, ii. 25-27.
- Written—Multiplicity of, in suits complained of in Petition for justice, v. 449-451.
- Insubordination among functionaries—Provisions for obviating, in the Constitutional Code, ix. 302-304.
- Insult defined, i. 115-116.
- Insults—Satisfaction with reference to, i. 377-381.
- Place of, in the subdivisions of the Penal Code, iii. 165.
- Insurance—its foundation in the equal distribution of losses, i. 306.
- How far the principle of, can be extended to losses occasioned by offences, i. 386-388.
- Application of the principle of, to prosecutions, i. 579-580.
- Frauds with regard to, how prevented, i. 547.
- of lives—Advantages of extending the principle of, viii. 416.
- Crimes connected with, ii. 212.
- of enemies' property, considered, i. 547.
- Insurance offices—Insufficiency of data for rendering speculations in secure, x. 334.
- Insurrection. Character of the offence of, i. 369.
- Popular associations not a cause of, i. 577.
- Vague and prejudicial employment of the word, in indictments for sedition, v. 257.
- Insurrection acts—The Irish, characterized, ix. 521 n.
- Integrity, probity, uprightness, &c., as designative of motives, i. 201.
- Intellect—Effect of interest on the operations of the, ii. 477-478.
- Intellection—Test of. Establishment of, as a branch of school discipline, viii. 44-45.
- Helps to, as a requisite in drawing laws, iii. 240-241.
- Intellectual aptitude of members of Parliament—Effect of non-attendance on, iii. 497-500.
- — Rules for securing, on the part of governors, ii. 273-274.
- Intellectual causes of trustworthiness in evidence, vi. 250-256. *See* Trustworthiness.
- Intellectual communication—Obstruction of, considered as a species of oppression, viii. 560-561.
- Intellectual facts. *See* Psychological.
- Intellectual faculties—The, concerned in testimony, classified, vi. 248.

- Intellectual faculties**—Philosophy of the, represented by Nooscopic Pneumatology, in the Encyclopedical Sketch of Art and Science, viii. 88.
- A general list of, with definitions and descriptions, viii. 74-76.
- Intellectual instruction**—Advantages derivable from, viii. 8-16. *See* Learning.
- Intellectual weakness**—Effect of, in causing misjudgment and misconduct, i. 217-218.
- Intelligence**—Forgery of articles of, should be punished, vii. 140-141.
- Effect of, in regulating belief, vii. 102.
 - vulgarly allied with improbity, vii. 393.
- Intemperance**—Use of statistical information on the prevalence of, ix. 627.
- Intensity**, as an ingredient in pleasure or pain, i. 16.
- Intention**—Inference of disposition from, i. 60-68. *See* Dispositions.
- with regard to the consequences of an act, i. 35-36.
 - Reference of disputes regarding possession to, iii. 189.
 - Declarations of, as evidence of crime, vii. 21.
 - Infirmative circumstances applicable to declarations of, as evidence, vii. 22-23.
 - good and bad—Erroneous uses of the term, i. 42-43, 44-45.
- Intentions**—as proper subjects of the attributives good and bad, i. 216-217.
- Intentionality**—Connexion between, and consciousness, i. 44.
- with regard to actions, i. 40-43. May regard either the act itself or its consequences, 40. Consequences cannot be intentional without act being so in its first stage, ib. Consequence may be *directly* or *obliquely* intentional, 41. *Ultimate* and *mediate* intentionality, ib. *Exclusive* and *inclusive*, ib. *Inexclusive* may be *conjunctively*, *disjunctively*, or *indiscriminately*, ib. *Disjunctive* may be with or without preference, ib. Illustration, 42. Stages of intentionality, ib. The expression good and bad intentions discussed, 42-43.
 - How it may influence the mischief of an act, i. 73-76. Cases—an involuntary act, heedlessness, misapprehension with and without rashness, and complete intentionality, 73-74. Influence of motive, 74-75. Secondary mischiefs may be aggravated by the nature of the motive, 75-76. By the goodness or badness of intention, 76.
- Interception of evidence**—Deductions from, vii. 49.
- Intercourse (Judicial)**—Means of, with a pursuer. How to be entered in his demand paper, ii. 66-70.
- Means of securing, for judicial procedure, ii. 52-57.
- Intercourse**—Means of securing, in proposed Despatch Court, iii. 418-419.
- Interdiction**—Nature of the right of, iii. 181, 183.
- of prodigals, &c., i. 332.
- Interessee**—Litigation by, ii. 36-37.
- INTEREST**—Indefinability of the term, i. 2 n. 1.
- of individuals—Nature of the, i. 2.
 - of the community—Meaning of, i. 2.
 - Meaning of the expression, that a person is said to have an, i. 207, 211.
 - Men, in the average, guided by their own, iv. 495.
 - The high merit of those who act against their own, for the public good, iv. 499.
 - as the foundation of political conduct, and the clue to its motives, iii. 526-527. Rules, 526. Certain application to bodies of men—difficulty in case of individuals, from difference of idiosyncrasy, 526-527.
 - Fallacy of expectation that legislators will do their duty against their, iii. 507.
 - Advantage of uniting, with duty, ii. 475-476; iv. 126.
 - and duty. Advantage of connecting, in official emoluments, ii. 237-239.
 - and duty—Importance of uniting, in Pauper management, viii. 380-381.
 - and duty—Union of, in self-acting laws, ii. 199-200.
 - No human action performed independently of, i. 211-212.
 - The universal—advantage of shaping particular interests in the direction of, iii. 453-454.
 - among the earliest feelings to which the faculty of speech would give utterance, viii. 203.
 - Those who have, in an abuse, consulted about its removal, ii. 13.
 - Effect of, in causing misjudgment, i. 217-218.
 - That a man consults his own, cannot be a reason against employing him for the public good, ii. 473-474.
 - connected with and distinguished from motive, vi. 257-258.
 - Power of, to elicit declaration of belief or disbelief, vii. 82.
- Interest in a witness**—as a ground for excluding his evidence, discussed, vi. 105-106; vii. 393-406; —
- in general—not a proper ground, vii. 393-396. Motives and interests, 393. Mistake that all interests are sinister, 393-394. The four sanctions, 394. Falsehood produced by a preponderance of motives, 395. Rejection of tendered testimony in Scotland, 395-396.
 - — considered as a ground of untrustworthiness in testimony, vi. 154-156; vii. 567-573. Foundation in motives, which dependent on hopes and fears, 567. List

of pleasures and pains correspondent, *ib.* Only two that can be measured—pecuniary interest, and aversion to labour, 568. Sanctions which bind a witness to the observance of truth, 569. Effect of sympathy, 569-570. Effect of love of justice, 570. Regard for reputation, 570-571. Time at which interest in operation to be kept in view, 571. All interests should be viewed, 572. The falsehoods most liable to be incurred, 573.

Interest in a witness—Pecuniary—Exclusion on the ground of, according to English law, *vii.* 397-400. Dependence of, on the extent of the sum and the opulence of the party, generally overlooked, 397-398. The only sort of interest of which people can see the extent, 398-399. According to lawyers, the *only* interest, 399. Witness believing himself interested, 399-400. Alteration of the law, 400 *n.*

— — — Pecuniary—Exceptions to the rule excluding evidence on the ground of, *vii.* 400-404. Interest against interest, 401. Interest contingent, 401-402. Illustrations, 402. Course of trade, 402-403. Wager on the cause, 403-404. Interest new, 404; *voire dire*, *ib.*

— — — Pecuniary—Effect of, on testimony, *vii.* 573-575.

— — — from social connexions—Effect of, on testimony, *vii.* 575-577.

— — — from the sexual connexions—Effect of, on testimony, *vii.* 577-581.

— — — from situation with respect to the suit—Effect of, on testimony, *vii.* 581-584.

— — — Legatees excluded from bearing testimony to wills by, *vi.* 548-549.

— — — Resignation of the subject of—How it restores competency of witness, *vii.* 438-440.

— — — Effect given to, in case of witnesses authenticating deeds, *vii.* 190.

Interest—Self-regarding—the great ruling principle of human action, *ix.* 5.

Interest—Sinister. The term defined, and its application described, *vii.* 385.

— — — Operation of, in producing fallacies, *ii.* 475-477. Interest divided into public and private, 475. All that the best men can do is to try to reconcile them, *ib.* The only hold on the performance of duties to the public is this personal interest, 475-476. Abuses a bond of connexion between governors, 476. Creation given up—preservation all that can be attempted, *ib.* Creation of some false principle as an instrument of protection, *ib.* Adoption of custom instead of utility as a standard, 477.

— — — One of the causes of dread of innovation, *ii.* 419.

— — — Various kinds of, which create dread of innovation, *ii.* 420.

Interest—Sinister—Plans opposed to, said to be too good to be practicable, *ii.* 461.

— — — Its influence in fallacies of authority, *ii.* 389-390.

— — — Action of, distinguished as perceived, and unperceived, *ii.* 484.

— — — of public opinion, *i.* 530-531.

— — — and not upright prejudice, the cause of monarchical misrule, *ix.* 138-139.

— — — Action of, in tinging the opinions of lawyers and churchmen on matters of legislation, *ii.* 395-398.

— — — Uselessness of attempts to counteract, by reason, *iii.* 600-601, 621-622.

— — — of judges and lawyers—Alliance between, *vii.* 201-214. Pecuniary, 202. Division of spoil, *ib.* Lies a means of increasing business, 203. Admissions as to personal purity of the existing judges, 204. Depravation of the intellectual and moral faculties of the people, 204-205. Interest in irrationality of the laws, 206-207. Limits to the operation;—The fear of being sufferers gives lawyers an interest in the furtherance of criminal justice, 207-209. How far the vices are the effect of design, 210-211. Recapitulation, 211-214.

— — — not capable of being counteracted by any measure for giving better expression to truth, *vi.* 227.

— — — of various classes of persons in the false ends of judicature, *vi.* 10-12.

— — — the false but pursued end of judicature, *vi.* 10-12.

— — — Source of affidavit and other unfit modes of evidence, *vi.* 42-43.

— — — Laws generally made in furtherance of, in barbarous times, *vi.* 373.

— — — of judges—Fee-gathering system founded on, *vii.* 199-201.

— — — the term Dexter interest proposed as a converse of, *vi.* 253.

Interests—Application of appellatives to, *i.* 217.

— — — corresponding to pleasures and pains, in the Table of the Springs of Action, *i.* 197-205.

— — — Characters given to the motives arising from the various kinds of, *i.* 212-214.

— — — Particular. Their superiority in tactics and adventitious aids over the interest of the people at large, *iii.* 98.

— — — as giving rise to political fallacies, *ii.* 482-484. Preponderance of self-regarding over social interest, 482. Interests of the many sacrificed to those of the few by people in power, 482-483. Community of interest between those who have and those who expect power, 483. Points on which their interests are opposite, *ib.* Opposition by Outs to the good measures of the Ins, 483-484. Opposition to bad measures when likely to be unsuccessful, 484.

Interests—Combination for the furtherance of—their effects in producing restrictions on trade, iii. 97.

— that affect attendance in Parliament, iii. 503-505.

— See Motives.

Interest-begotten prejudice—a cause of the existence of fallacies, ii. 477-478.

Interest (of money)—Impolicy of legal restraints on, urged in Defence of Usury, iii. 1-29.

— Impolicy of legal restraints on, considered in Manual of Political Economy, iii. 47-52.

— Variations that have taken place in the rate of, and application to the usury laws, iii. 4.

— Method of fixing rate of, by custom, iii. 4.

— Forced reductions of, an infringement on the security of property, i. 319-320.

— Peculiar utility of a high rate of, for projectors and others striking out new sources of profit, iii. 22.

— Reduction of, through the project of circulating annuities, iii. 107.

— Reason why paper not bearing, is not circulated by Government, iii. 149-153.

— on funded debt—Reduction of, as compared with operation of Annuity-note scheme, iii. 141-144.

— Compound. The refusal of, is punishment to a creditor for lenity, and reward to debtor for unpunctuality, iii. 18-19.

— Compound. The project of circulating annuities as a means of realizing, iii. 107.

Interesting—The word has no meaning save as it refers to conduciveness to wellbeing, viii. 290.

Interior-communication Minister—Provisions regarding, in Constitutional Code, ix. 441. To take order for facilitating communication between place and place, ib. His functions, and the subjects on which they are exercised, ib.

Interjections—do not form a part of organized language, viii. 188.

— are fragments of original language involving propositions in single words, viii. 323, 357.

Interlocutors in the Court of Session—Delays attending, vii. 222-223.

Interlocutory orders of courts—should not be subject to appeal, iv. 343-344.

Intermediate evidence defined, ii. 60.

Interment—Plan for preventing occurrence of, where death has not taken place, vi. 571 n.

Internal evidence of spuriousness of writings, vii. 183.

International—Reasons for coining the word, i. 149 n *.

International Code—Plan of the, iii. 200-201.

— The sea as a subject of the, iii. 201.

International Law—Position of, as a branch of Ethics in the Encyclopedical Sketch of Art and Science, viii. 94.

— Place of, with reference to a general code, iii. 162.

— Principles of, ii. 535-560.

— Objects of, ii. 537-540. Common utility of all nations, 537. Statesmen to keep it in view that it may at least give a direction to their proceedings, ib. Five rules regarding the doing good and avoiding evils to other countries, so far as may be consistent with our own not suffering, 538. The doing what makes another nation suffer disproportionately to the gain, an offence, 538-539. Like principle as to obligation to do good, ib. Principles and application of war, 538-539. The Adjective international law, 539. Offences of sovereigns divided into those of good and those of bad faith, ib. Causes of the former, and of wars, 539-540. Means of prevention, 540.

— A court of judicature for the administration of proposed, ii. 552-554. Would be advantageous though not armed with coercive powers, ib. Illustrations from history, 552. Would reduce the burdens of nations, 553. Its power in reporting and circulating its opinion, and putting the refractory under ban, 554.

— Principles that should rule a member of a legislature in regard to, ix. 202.

— The term Balance capable of application to, ii. 447.

— A Code of, a desideratum, x. 584 ; xi. 34.

International morality—Deficiency of, ii. 552.

Interpretation of a code of laws—Rules regarding the, iii. 209-210.

Interpreting a law—the application of the term presumes dubiety, iv. 313.

Interrogated contrasted with affidavit evidence, vi. 38.

Interrogatedness—as a security for evidence, vi. 283.

Interrogation—Modes of, to be abstained from in procedure, ii. 59.

— Modes of, in use in English practice, vi. 33.

— as a security for correctness and completeness in, and thence for the trustworthiness of testimony, vi. 284, 289, 332-351 ;—

— Uses of, as applied to extraction of evidence, 332-333. Chief use in case of *mala fides*, 332. Produces completeness, ib. Particularity, ib. Discovers falsehood, 332-333. •

— Exceptions to the application of, vi. 333-334. Where delay may produce irreparable damage, 333. Where security outweighed by expense, 334. Rules to be followed where dispensed with, ib.

Interrogation—on whom should it be performable? vi. 334-335.

- by whom should it be performable? vi. 25, 335-345. No interrogator to be excluded but on ground of mendacity-serving suggestion, or preponderant inconvenience, 335. Judge, Plaintiff, Defendant, Advocates, and in some cases extraneous witness, should have the power, *ib.* List of possible interrogators and intergatees, 336 and *n.* Cases in which there can be but one interrogator, 335-336 *n.* Diversities in common law and equity on the subject, 336-337. Parties should be interrogators and deponents, and should be interrogated by their own advocates, 337-338. Witnesses should be allowed to interrogate each other and the parties, 339-341. (*See* Witness.) Defectiveness of English cross-examination, 342-343. Circumstances rendering it unfit to commit the duty of interrogation entirely to the judge, 343-345.
- Affections of the parties concerned in, towards each other—how far presumable, vi. 346-347. Examination of different cases, and deduction that no general rules can be made, *ib.*
- Distinction between amicable and *ex adverso*, vi. 347-351. Beneficial effects of hostile examination, 348. Judge examining—the principle, that he should be counsel for the accused, attacked, 349-351.
- Five modes of, compared, (*viz.* 1. Oral, by the parties publicly before the judge; 2. By the judge privately in absence of parties; 3. By the judge publicly in their absence; 4. By judges chosen by the parties; 5. Epistolary,) vi. 423-428. Oral and written compared, 424-426. The four oral modes compared, 426-428.
- should be essential to the acting upon admission as confession, vii. 31.
- Difference between Extrajudicial and Judicial, in point of efficacy, vii. 41-44.
- confounded with torture, vii. 454-455.
- Assertion performing the part of, vii. 40 *n.*
- Confessorial and other self-disserving evidence extracted by, vii. 39-44.
- Faculty of, to notary who certifies contract, vi. 527.
- when the Oral, and when the Epistolary form of, should be used, vi. 33.
- as an instrument for supplying the deficiencies of real evidence, vii. 14-15.
- Discreditive, vi. 400-406. *See* Discreditive Interrogation.
- Epistolary;—compared with Oral, vi. 524-526.
- Epistolary—In what cases applicable, vi. 429-436.
- Epistolary, recommended, in case of impediments to Oral, vii. 374-375. *See* Epistolary.

Interrogation—Method of, in equity causes, vi. 444-445.

- Oral, analyzed, vi. 383-386. *See* Oral Interrogation.
- of parties in suits, urged, vii. 487-489.
- of parties by each other—difficulty of reconciling with, their being examined apart, vi. 362 *n.*
- in the Roman mode—partakes of scriptural and *viva voce*, vi. 444.
- Suggestive, vi. 392-399. *See* Suggestive Interrogation.
- Written—Difficulties in the way of, vii. 42. *See* Epistolary Interrogation.
- Right of, difference between its depending on the sanction of the judge, and his merely having the power to restrict it, vi. 504.
- Interrogative mode of instruction—Specimen of, viii. 107 *n.*
- Interrogatory in a Bill having a charge to support it, ii. 49; vi. 483.
- Interrogatories for examination by commission, vi. 487.
- on the system of confrontation, vi. 501.
- Intervals—Long, between sittings of courts, vii. 241-245.
- — Proposal to remedy, vii. 371-373.
- Intestine troubles as a source of international wars, ii. 539, 545.
- Intimidation—Counterpart of remuneration as an instrument of government, ix. 47-48.
- in the form of vituperative and contemptuous expressions against those who attempt law reform, v. 96.
- at elections—Analysis of the operation of, iii. 479-482.
- at elections compared with bribery, iii. 482-485.
- Intolerance—productive of the evils attributed to vengeance, i. 383.
- a characteristic of those who, by adopting the authority of others, admit their own imbecility, ii. 392.
- How far it may be successful in coercing opinion, vii. 108.
- traced to its source, vii. 109 *n.*
- Operation of, created prejudices against informers as to crimes, ii. 222-223.
- Demoralizing and debilitating effects of, i. 565.
- Religious. Suppression of benevolency by, i. 562.
- Intoxication—Extent of the mischief of, i. 72.
- Effects on society of indulgence in, i. 539-540.
- In what cases admissible as an extenuation of an offence, i. 79, 84.
- Pleasures and pains of, as springs of action, i. 197.
- Intransitive acts distinguished from transitive, i. 36-37.
- Introduction to the *Principles of Morals and Legislation*, i. 1 *et seq.*

In-trust holders or consignees—Provision as to, in Dispatch Court Bill, iii. 382-388.

Inundation—Application of analogical punishment to the offence of, i. 407.

— One of the dangers to be kept in view by the Preventive Service Minister in the Constitutional Code, ix. 439.

Invalidity—Causes of, in contracts, i. 331-333.

Invasions—Incongruity of the principles of, in modern warfare, ii. 551.

Invention—Nature of, as one of the human faculties, viii. 74-75 n.

— as a mental operation in connexion with logic, viii. 226.

— A faculty not necessary to the teacher or learner, viii. 76.

— as a department of logic, viii. 275-279. Precedes teaching and learning, 275.

Presupposes art—either a new art or a new mode of an art, 275-276. Inventions applicable to all arts are so to all sciences, 276. Mementos applicable:—Respect finem, ib. Avoidance of servile imitation, ib. Guard against intellectual weakness, sinister interest, interest-begotten prejudice, adoptive prejudice, ib. Classification of ideas, ib. Use of analogy, ib. Logical subalternation, ib. Knowledge of existing discoveries, ib. Latest inventions to be searched for, ib. Quodlibet cum quolibet, ib. Trial of relation to end, ib. Elucidations and examples, 277-279. Application of the subalternation scales—what is shown of the species try if it is in the genus, and *vide versâ*, ib.

— described as imagination taken under command by attention, viii. 76.

— Nomenclature should keep progress with, ii. 383.

— The trouble of, a motive for truth, vi. 262.

— Mendacious, oral interrogation gives fewer opportunities for, than written, vi. 424-425.

— on the part of witness—how far helps to recollection compatible with avoidance of, vi. 446-451. See Helps to Recollection.

Invention and discovery—The author's instruments of, or logical arrangements, iii. 285-285.

Inventions—In what instances rewards for, unnecessary, ii. 212.

— Principle of granting patents for, iii. 71-72.

— Kinds of, that are ranked among extraordinary services, ii. 193.

— propagate each other, iii. 27.

— Authorship of, a subject of evidence, vi. 5 n.

Inventive faculty—Application of methodisation to the assistance of the, viii. 272.

Inventor—is in relation to art what the discoverer is to science, viii. 76.

Inventor—Difficulties he has to combat with in introducing his productions to the world, iii. 49-50.

— The faculties exercised by, distinguished from those by the teacher and learner, viii. 74-76.

— Discouragement to, by the usury laws, discussed, iii. 20-29, 47-50.

Investigation—as a security for trustworthiness in evidence, vi. 284-285.

— by judge in case of application for services, ii. 37-38.

Investigatorial authority, as part of the power of a judicature, to enable it to search out evidence, v. 32-33.

Investitive facts—Nature of, vii. 270.

Investments—Profitable. Individuals can choose better for themselves than Government for them, iii. 43.

Involuntary distinguished from voluntary evidence, vi. 218.

Ireland—Conduct of England to, i. 7 n.

— Letter against the coercion of, xi. 64-66.

— Usage of the Catholics of, ii. 451.

— Prevalence of the Roman Catholic faith in, an evidence that religion is not supported or put down by coercion, viii. 546.

— Catholics of—Plan for uniting with the Dissenters for the furtherance of religious liberty, x. 592-594.

— Nature of the associations in, i. 577.

— Allusion to the support of a Protestant clergy in, i. 317.

— Use of the Protestant bishops in, questioned, ii. 449.

— Bishops of—their oath to erect schools broken, v. 456.

— Political phraseology applicable to the monarchy does not comprehend, iii. 571 n*, 604 n*.

— Injustice to, in respect of amount of representation, iii. 584 n.

— Registration of titles in, i. 552.

— Creation of the order of St Patrick in, ii. 221.

Ireland's forged papers of Shakspeare noticed, vii. 193.

Irish insurrection acts characterized, ix. 521 n.

Irish labourers in New York—Plan for the instruction, and the improvement of the moral character of, x. 500-503.

Irish—The United. Fear of disturbances from, in New South Wales, as illustrative of the state of that colony, iv. 205.

Irish Volunteers' Association an illustration of the advantages of Democratic ascendancy, iii. 613-622.

— — — Origin and characteristics of, iii. 614-615.

— — — The breaking up of, by the treachery of the leaders, described and accounted for, iii. 618-620.

— — — Conduct of, adduced to the Spa-

- nish people as a testimony to the moderation of democrats, viii. 473-474.
- Iron—The employment of, in buildings, and especially prisons, urged—great strength, and little room occupied, iv. 97-98.
- Irons—Necessity of putting prisoners in, obviated by Panopticon plan, iv. 47.
- Irrationality of the law—Interest of lawyers in, vii. 206-207.
- Irregular nouns and verbs—Fragments of language anterior to the use of systematic inflection, viii. 327.
- Irrelevancy in evidence—Anticipative survey would be a means of exposing, vii. 369.
- as a ground for the exclusion of evidence, vi. 89; vii. 362-366. Necessity for giving Judge discretion in, 362. Exemplifications of irrelevancy, 363. Inquiries in which irrelevancy is suppressed in English practice, ib. Irrelevancy a peculiar growth of equity, ib. Irrelevancy enforced by rejection of confessional evidence, by the system of pleading, by equity practice, and its divergence from common law, 364-366.
- Irrevocable Laws. The fallacy of, ii. 401-408. How connected with the fallacy of vows, 401-402. Absence of sufficient data and experience, 402. Worse than laws of living tyrants, because no chance of revocation, 403. Laws should be tried by their own merits, ib. Laws called void, ib. Classing laws as contracts, 403-404. Treaties, 404. Grant of privilege by the Sovereign, ib. Constitutional distribution of powers, ib. Incorporative unions, 404-407. England and Scotland, ib. All laws made for the future, but should bind it by their rationality, 407-408.
- Irritability—Bodily—Nature of, i. 23.
- Isagogè—The, of Porphyry—The formula for Dichotomous division in, examined, viii. 111 n.
- Issue—Directing an, v. 43; vi. 40, 71, 488.
- Rule that evidence is to be confined to the points at. Chapter on, by Editor of original edition of *Rationale of Evidence*, vii. 558-562.
- Issue Books in the system of Official Registration in the Constitutional Code, ix. 245.
- Issues—General. A means of abbreviation, but defective, v. 42.
- Judge leaves the framing of, to an inferior, v. 43.
- Italian system of Book-keeping. Objections to, v. 383-386.
- — — The author's system of National Book-keeping compared with, ix. 253 n.
- Ivernois—D^r—Letter from, and Bentham's opinion on his work on the French Revolution, x. 305.
- Jacks—Mr Deputy—His fears for the destruction of property under Radicalism, iii. 560.
- Jackson—President—Letter to, on his opening message, &c., xi. 40-42.
- Jacobinism—Opinions on the state of, in France, x. 296.
- Jacobites—Illustration of the corruption of blood with reference to the, iii. 273.
- Jacobitism—Prevalence of, in the early part of the eighteenth century, x. 2.
- Jactitential evidence, or boasting of iniquity, vii. 33.
- Jail discipline. See Prison discipline.
- James I.—Reign of, characterized, ii. 444.
- Persecution of Arians by, ii. 417, 450-451.
- — Credulity and cruelty of, viii. 78.
- — His monopolies, iv. 262.
- — casually noticed, i. 10 n; iv. 267; ix. 79; x. 495.
- James II.—Designs of, characterized, ii. 443.
- Criticism on application of the word "abdicate" to, iii. 508-509.
- — Falsehood of the alleged "abdication" of, ii. 409.
- — Characteristics of, iv. 282-283.
- — casually noticed, iv. 280; v. 280, 369; viii. 557, 575; x. 47.
- Januarius—St. The miracle of, proposed to be made a toy of, i. 568.
- Japan—Curious police regulations in, i. 557.
- Japanese—their remarks on a balloon, cited, vii. 94.
- Jargon—Legal. Principle of, vii. 230-283. Makes business, 280-281. Intercepts legislative interference, 281. Bond of union to lawyers, 282. Different kinds, with illustrations, 282-283.
- — stated as a device of Technical procedure, v. 13.
- Jassy—Bentham's visit to, on his way to Russia, x. 158.
- Jay—Chief Justice, (United States,) noticed, x. 302.
- Jealousy—Nature of, i. 53.
- Jebb—Dr. His opinion against employing military to guard prisons, iv. 164.
- Jefferson—Jacob. Bentham's tutor at Oxford, x. 37.
- Jeffrey—Francis, noticed, x. 422, 473.
- Jeffries—Judge, noticed, v. 375.
- Jekyll—Sir Joseph. Letter from, to Bentham, x. 486.
- — Position of, as a nominee of Lord Lansdowne, x. 239-240.
- — noticed, x. 123, 145, 237, 280.
- Jenner—Dr. His reward for invention of vaccination, ii. 212 n.
- — noticed, viii. 25.

- Jephson—Mr. The pension procured for, by Gerard Hamilton, discussed, ii. 384-385.
- Jephthah's vow—Illustration from, vi. 271, 318.
- The enforced performance of, an illustration of the influence of priestcraft, v. 222-223.
- Jervis—Sir John, (Lord St Vincent,) noticed, x. 296.
- Jest—Evidence apparently criminative prepared in pursuance of, vii. 34.
- Jesuits—Dumont's account of the influence of, in China, x. 406.
- Characteristics of the, i. 537, 575.
- Jesus—Oaths prohibited by religion of, v. 219-220; vi. 28-29.
- Jew—The application of an oath in the case of a, considered, v. 202; vii. 423.
- Form of swearing a, vi. 323.
- presenting to a Christian benefice in England, ii. 509.
- Jews—Origin of Christian prejudices against, iii. 16.
- Whether provision can be made for the religious observances of, in prisons, iv. 24.
- Allusion to the persecutions of, in England, vii. 196.
- Incident of the murder of, with Coke's remarks, vii. 276.
- The—Confiscations levelled against, i. 320.
- Job—The reproach of a, used as a weapon in political discussion when useful plans proposed, v. 186.
- Jobbing—Vague and fallacious employment of the term in political discussion, ii. 473.
- The irrational passions of the people chargeable with the temptation to, ii. 202.
- Jockeyship—Use of the expression, iii. 14-15.
- John—King, noticed, v. 288-289 n; viii. 577 n.
- John the painter—Trial of, cited, vii. 31 n, 33 n.
- Johns—Mrs. Account of, as a visiter at Bowood, x. 106-107.
- Johnson—Mr Cochrane—Allusions to, x. 449, 455.
- Johnson—Samuel. His attributing the Fragment on Government to Dunning, i. 240-241.
- His commendation of Bentham's Latin verses, x. 41.
- His admiration of Hamilton's Parliamentary logic, ii. 386.
- casually noticed, vii. 210; viii. 313; x. 13, 22, 51, 124, 142.
- Johnson—General, a visiter at Bowood, x. 114.
- Johnson—Mr Justice—Trial of, for libel, cited, v. 66, 106, 114 n, 243.
- Johnstone—Governor. Bentham's desire to be secretary to, x. 64.
- Johnstone—Lieutenant-Colonel—Trial of, noticed, x. 465.
- Joint-stock company—Proposed vesting of the management of the poor in a, viii. 369.
- Jones—Gale. Allusion to the case of, v. 291.
- Jones—Sir William—Estimate of, x. 51, 571.
- — — Quoted in favour of virtual universality of suffrage, iii. 459 n.
- — — noticed, x. 168.
- Jones—Colonel—Mention of, xi. 20.
- Jones—a music teacher: gives instructions to Bentham, x. 8-9.
- Joseph II.—Miscalculation of his reforms, i. 181.
- Joseph—The cup of, in Benjamin's sack, an illustration of forgery of real evidence, vii. 16.
- Journal of motions in legislative assemblies proposed, ii. 352-353.
- Journal Books for the registration of official operations in the Constitutional Code described, ix. 234.
- Different sub-specific books of, and method of keeping them, ix. 242-246. See Books.
- Jousse—M., noticed, vi. 231, 503 n.
- Jovellanos, (Don Gaspar de)—Letter, seeking Lord Holland's intervention with, to facilitate a project by Bentham to emigrate to Mexico, x. 439-444.
- Letter from, x. 448.
- Bust of, sent to Bentham by Lord Holland, x. 477.
- noticed, x. 445.
- JUDGE—Evils of discretionary powers in, i. 325-326.
- Latitude of, in case of reparation for offences, i. 384-385.
- and person judgeable—Communication between, ii. 27-28.
- Rules for the guidance of, in the exercise of his ulterior powers, ii. 29-31. Balance between direct and collateral ends of justice, 29. Give reasons for decision, ib. Cautions regarding vexation, delay, number of persons affected, &c., 29-30. Middle-agency-sparing principle, 30-31.
- Responsibility the effectual protection from abuse of power of, ii. 31.
- No application should be to, except in open court, ii. 40.
- Method by which useless consumption of the time of, obviated, ii. 46.
- Conciliative distinguished from punitive functions of, ii. 47.
- How he should preserve parties wronged from ridicule, ii. 114.
- Responsibility of, lessened by jury, ii. 118.
- Influence of, over jury, ii. 123.
- Propensity of, to convict in libel cases, ii. 124.

- JUDGE**—Corruption and misdecision by, more alarming than by jury, ii. 124.
- Tendency of presence of jury to increase his aptitude, ii. 124.
 - Manner in which a quasi-jury might act with, as assessors, ii. 141-158.
 - Inspection of, by jury, to be effectual, should attend every step of procedure, ii. 145-146.
 - Method by which he will defeat a law reform, ii. 411-412.
 - No decision of, should fix a doubtful law till legislatively sanctioned, iii. 210.
 - The necessity of education and experience for the office of a, iv. 363-364.
 - Importance of his having a *rationale* to the law he administers: guidance, restraint, and support, iv. 492.
 - without jury—preferable to a covertly pensioned jury in cases of libel, v. 116-117. The responsibility of one who judges openly, ib.
 - Exclusion of parties from presence of, a device petitioned against in Petition for justice, v. 446-448.
 - characterized as the physical enforcer of the sovereign's will, vi. 7.
 - Use of records to, vi. 31.
 - Erroneous decision by, has permanent effects, vi. 52.
 - Effect of vexation to, in the production of evidence, vi. 92-94.
 - Vexation to, how far a ground for exclusion of evidence, vii. 350-352.
 - the vexation attending the performance of his functions—how it should be viewed, vi. 94.
 - should have discretionary power of rejecting or refusing evidence where mischief apprehended from disclosure, vi. 98.
 - Initial meeting of parties before, vi. 136-137.
 - Nature of the services he renders to plaintiff and defendant, vi. 210.
 - Power with which the legislator should arm him in relation to evidence, vi. 211-213.
 - not necessary for him to push evidence to the utmost strength of probative force it is capable of, vi. 233.
 - Should he decide without external evidence? vi. 276-278.
 - not to be overlooked in precautionary arrangements as to evidence, vi. 281.
 - Extent of his sphere of transgression, vi. 282.
 - Power and authority give credit to the assertions of, vi. 290.
 - Reasons why the interrogation of witnesses, &c., should not be entirely left to, vi. 343-345.
 - Cases in which interrogation is left to, vi. 345.

- Judge**—as an examinant, should be neither adverse nor amicable to either party, vi. 349-350.
- Proposition that he should be counsel for prisoner combated, vi. 349-351. Should be counsel for all parties, and discover attempts by lawyers to take the question off the merits, ib.
 - should have the power of limiting publicity in his court, vi. 97 n *, 354.
 - Publicity tends to protect his reputation, vi. 355.
 - Giving reasons for his decisions occasioned by publicity, vi. 357. How far a good practice, ib.
 - Security of, from violence, &c., a reason for restricting publicity in courts of justice, vi. 361.
 - how he is to act in cases where the feelings of individuals seem to demand privacy, vi. 365-366.
 - should not be permitted to withdraw procedure in public offences from publicity, on his own sole instance, or on that of the prosecutor, or of the defendant, or of both, alone, vi. 370-371.
 - Principle of humanity prompts to neutralize penal laws, vi. 378.
 - What would be the effect of personally soliciting? vi. 379.
 - Conduct he should pursue when witness browbeat, vi. 407.
 - Uses of judicial registration to, vi. 409.
 - should be himself recorder of procedure for his own use, vi. 413.
 - Ease and interest of, consulted in the plan of severing the collection of evidence from decision, vi. 422.
 - Ordinary motives prompt him to decide well, if there be no preponderant counteracting interest, vi. 446.
 - should have power to limit the time for witness answering questions, vi. 449.
 - Examination of witnesses by, in the Roman mode—Defects of the system, vi. 499-500.
 - Extent to which he should be entitled to limit interrogation, vi. 504.
 - Laws secretly abrogated by, vi. 552-553.
 - Exclusion of the parties from the presence of, vii. 226-233. *See Parties.*
 - Necessity of discretion to, as to exclusion of evidence on ground of inconvenience, &c., vii. 344-345, 347.
 - Proceedings of, must be taken as legal, vii. 462.
 - How far his personal convenience to be consulted in respect to the amount of evidence produced, vii. 531-532.
 - Instructions from the legislator to, for estimating the probative force of evidence, vi. 151-175; vii. 563-598. *See Instructions.*

Judge—Notes by—Authority of, vi. 413 ; vii. 409.

— Position and functions of, described, ix. 465.

Judges—Power of, made arbitrary by death-punishment, i. 44.

— Latitude to, in regard to punishments, i. 516-517.

— Sinister interest of, against the proper ends of procedure, characterized, ii. 13-14.

— Principal and depute—Outline of arrangements regarding, ii. 22.

— Method in which they should examine applicants as to the service they wish, ii. 37-38.

— Extent and nature of the sinister interest of, as exhibited in rules of procedure in England, ii. 75-76.

— Extent of discretion of, in curtailing the pursuer's demand, ii. 84.

— Impossibility of punishing, when they offend, ii. 119.

— Application of the system of unanimity as among juries to, ii. 136.

— Influence of system of appeals on conduct of, ii. 165-166.

— Recapitulatory examination as a protection from, ii. 158-161.

— of immediate and appellate judicatories—Difference between the checks applicable to, ii. 167-168.

— Evils of remunerating by fees, iii. 336.

— Fees of, are rewards for contravention of duty, ii. 209.

— Remuneration of—how to adjust to the profits of the bar, ii. 215-216.

— Considerations as to salaries of, iii. 335-336.

— Unpaid—Propriety of receiving the services of, iii. 343.

— Duty of, to propose amendments to the Code, iii. 370 n.

— The uninterrupted attendance of—Reasons for, iii. 406-409; iv. 378-379.

— Corruption and bribery of, compared to the system of placemen in Parliament, iii. 491.

— Popular election of, advocated in preference to the mode of the National Assembly of France, of presenting a list to the King, iv. 307-309.

— The plans of the French National Assembly for keeping them subordinate to the Legislature, examined, iv. 310.

— Necessity of a suspensive power to, with reference to the legislature, in cases where the strict interpretation of a law would produce hardship, iv. 312-315.

— Utility of publicity as a check on, and its exemplification in England, iv. 317.

— Malversation of. Feeling of insecurity the chief mischief from, iv. 340-341 n.

— Necessity of the appeal system as a check on, iv. 338-353. *See* Appeal.

Judges—Appointment, continuance, power, and rank of, in the Judicial Establishment proposed for France, iv. 354.

— Arrangements for the pay of, in the Plan of Judicial Establishment proposed for France, iv. 354-355.

— Attendance of, according to the Plan of Judicial Establishment proposed for France, iv. 356.

— Official oath of, according to the Plan of Judicial Establishment for France, iv. 356-357.

— Deputes of, according to the Plan of Judicial Establishment proposed for France, iv. 357-358.

— Responsibility of, according to the Plan of Judicial Establishment proposed for France, iv. 358.

— Power of motion of, considered in reference to the Judicial Establishment of France, iv. 358-368. Necessary to the efficacy of election, 358-359. Popularity

— Utility of a magistrate being thought good whether he be so or not, 359. A door left open to correct mistaken choice, ib.

No pride or self-love to prevent the retracing their steps as in the case of individuals, 359-360. Better to deprive people of choice of a good judge than of privilege of getting rid of a bad one, 360.

No personal interests in the way of patronage that the people can pursue, 359-360. A remedy for defects against which no specific recourse could be otherwise had, 360. Improbability one of these, ib.

Want of intelligence, ib. Harshness and ill-humour, 361. Hastiness, 361-362. Considerations as to independence—good under a despotism—bad in a democracy, 362.

Independence against individuals favourable, against the public unfavourable, to probity, ib. Independence on the public is despotism, 362. Injustice and caprice of the people exaggerated, 363.

Periodical election not a succedaneum, 363-366. If there be forced intervals of exclusion it deprives the public of the benefit of the judge's experience, 363-364.

Attention to the periodical elections would induce a too active courtship of popularity, 364. Contagion of partiality, ib.

Would throw the office solely into the hands of those who could live independently of it, 365. Disquiet and profligacy produced by the frequent repetition of popular elections, 365-367.

Reservation of salary notwithstanding motion—renders it less invidious, supports independence, enables the public to make a good bargain, 367-368.

Power of Deputation by, in proposed Plan of Judicial Establishment for France, iv. 368-370. Affords materials for choice in elections, 368-369. Promptitude, 369.

- Economy—unpaid depute practising for the sake of experience and name, 369-370.
- Judges—Gradual promotion of, as part of the Plan of Judicial Establishment proposed for France, iv. 370-372. Gives a choice among the inferior Judges, of persons for the higher offices, 370. Support from public opinion to Appeal Courts, ib. An inducement to qualification by education, 370-372.
- Emoluments and remuneration of—proper principles of, iv. 372-378. The patriotic auction, 372. Means of accomplishing the most perfect economy, ib. Service the reverse of prejudiced, 372-373. If person chosen have offered nothing—transcendent merit indicated, 373. Paying shows a love not for the salary but the office, 373-374. Not to be confounded with venality, 374-375. Difference where saleable offices in hands of individuals, 375. Burden to the state diminished by increase of its wealth, 376. The dignity and other accessories of wealth capable of being given to the Judge without it, 376-378.
 - The rank of, iv. 378. Should be coordinate with their power, and therefore above that of the persons bound to obey them, ib.
 - should be prohibited from auctioneering, iv. 379.
 - should be prohibited from holding other offices, iv. 380-381. Want of time, 380. Danger to probity, ib. Unjust monopolies, ib. Especial danger when the additional office in patronage of the crown, ib. Examples in England where Judges members of the Legislature, ib.
 - Rules and principles as to their taking an oath of office, with opinions as to official oaths as laid down in Plan of Judicial Establishment for France, iv. 381-384.
 - Their function and profession should be kept distinct from those of the other official lawyers connected with their judicatories, iv. 387-389.
 - Advantage of competition among, v. 17.
 - The proper use of Juries is to act as a check upon, v. 67-69.
 - Interests to the action of which they are particularly liable to be exposed, v. 89-91. not directly to bribery, but to love of ease and of vengeance, ib.
 - instead of making law by decisions, should be allowed to propose it in *terminis*, v. 500.
 - Extent of their interest in the delay of justice, v. 520.
 - Application of a scale of persuasion with regard to probative force of evidence to, vi. 225-226.
 - Species of, who administer the moral sanction, vi. 353.

- Judges—Rules concerning authentication for the use of, vii. 184-188.
- of last resort—the only Judges on the aggregate quantity of whose time there is a certain limit, vii. 350-351.
 - Opinion against requiring allowances to, ix. 31.
 - of Courts of Appeal—Provisions regarding in Constitutional Code, ix. 585-588. See Appellate Judicatories.
 - Reasons why they should not be chosen from among professional lawyers, ix. 592-595.
 - Functions of, by the Constitutional Code. See Judiciary Collectively.
 - casually animadverted on, i. 187, 240, 448 ; ii. 11, 73, 109, 111, 122, 151, 152, 181, 208, 238, 396, 422-423, 425, 456, 466 n, 575 ; iii. 280-283, 351, 352, 406-407, 505, 566 n, 568 n ; iv. 484 ; v. 5, 6, 202, 233-237, 462, 467, 472, 489, 503, 515, 522-523, 529, 533, 575, 583 ; vi. 14, 22, 23, 26, 32, 36, 40-41, 50-51, 53-57, 97 n, 100, 102, 103, 104, 112, 113, 138, 150, 175-176, 178-179, 181, 182, 184, 266-267, 269, 273, 314, 326, 338, 364, 389, 400, 445, 463, 464, 491, 494 n, 516 n, 517 n, 547 n, 557, 581 ; vii. 44, 106, 155, 159-160, 192, 193, 194-195, 285, 290, 291, 329, 381, 387, 390, 430, 473, 484 n, 519, 546 n, 565 ; viii. 472, 474 ; ix. 2, 186, 193, 196, 391, 414, 462, 463, 470 n, 502, 511, 514, 578, 604.
 - Judges—The English—their conduct as to findings under forty shillings, marks their disapprobation of death-punishment, i. 526-527.
 - Connexion of sinister interest of, with that of the crown, ii. 11-12.
 - Example of mendacity shown by, ii. 60.
 - Indifference of, to effects of their proceedings on offenders, ii. 119.
 - A plan for their making rules for arrangement of business, &c., subject to disallowance by Crown or either House, iii. 367-371.
 - Inapplicability of the designations of the, iii. 397 n.
 - Their method of respecting the Declaration of Rights, iii. 427 n.
 - though having seats in the Legislature how indolent as law reformers, iv. 314.
 - Removal of, on address from Parliament—Merits of the system, iv. 361 n.
 - only denied seats in the Commons, when they have to attend on the Lords, iv. 380.
 - Evil of their having seats in the House of Lords, iv. 381.
 - Means of corrupt misinterpretation which the uncertainty of the common law gives them, iv. 489.

Judges—The English—Check on, of juries
—how done away by influence, v. 69-76.

— Purposes to which their influence on juries may be made subservient, v. 88-97.

— Interests to the action of which they stand exposed, v. 91-97. Position and profession from which they are taken give sympathy with the higher classes and with delinquents, 91. Fees in their various shapes, ib. Worse than other countries where they are liable to palpable bribery only, which can be obviated, 92. Falsehood learned in the manner of acquiring jurisdiction, ib. Fictions and their influence, 92-93. Legalization of pillage by its antiquity—common law, 93. Baneful influence in making of statute law, 93-94. Illustrations, ib. n. Evil done by laudation of the impurities in the system, 95. Intimidation, vituperative and contemptuous expressions levelled against those who attempt reform, 96-97.

— Their exertions in crushing the Liberty of the Press, v. 97-101.

— Having so many abuses of their own to protect, assist in guarding other people's, v. 99-100.

— Doctrines and rules by which, in libel actions, they crush the Liberty of the Press, v. 105-114.

— Illustrations of their lax views of the obligatoriness of acts of Parliament, v. 126 n, 140.

— Their propensity to found on and support the abuses of their predecessors, v. 142-143.

— Instances of their nullifying statutes in the case of Howard's Act and others, with proposed remedy, v. 176-186.

— Creation of the Mendacity-license by, through encouragement to oaths, which being the only punishable form of falsehood, was held to license it in all others, v. 197-200.

— Their influence over the minds of jurymen in relation to the obligations of oaths compared with priestcraft, v. 204-205.

— Make laws by inflicting them as dogs are taught obedience, v. 285.

— The extent to which they are under the influence of the crown, as possessing the power of promotion, &c., v. 339-342.

— Conduct of, with respect to fees, &c., animadverted on in "Indications respecting Lord Eldon," v. 348-386.

— Creation of fees by, rendered illegal by various acts of Parliament, v. 553-554.

— Lord Eldon's Act for legalizing the creation of fees by the, criticised, v. 362-364.

— Evils created by the sinister interest

of, the foundation of the complaints in the Petition for justice, v. 444-445.

Judges—The English—Origin of granting writs to, to try causes, v. 446.

— Their license of mendacity to litigants—an article in the Petition for justice, v. 451-452.

— In connexion with the Mendacity-license, vi. 22-23; vii. 268-270. See Mendacity-license.

— The offences of lying and theft perpetrated in their system of fictions, v. 453.

— Their sinister interest in the system of administering oaths exposed in Petition for justice, v. 458-460.

— Notes of, substituted for official record of evidence, v. 475.

— Their deciding on grounds foreign to the merits—a grievance charged in the Petition for justice, v. 476-480.

— The manner in which they split jurisdictions described, v. 482-483.

— Early—The conflicts of for jurisdiction and fees, described in Petition for justice, v. 491-494.

— charged, in the abridged Petition for justice, with licensing, rewarding, compelling, and practising mendacity, v. 510-513.

— The imputability of corruption to, v. 539-541. Although no bribery and individual corruption, yet corruption by wholesale, ib. Manifested in grasping for power—support of class-interests—aid to the government against the people, ib.

— Paying by fees—Brougham's opinions on, criticised, v. 588-589.

— Constitutional evils that may be committed by, vi. 10 n.

— Sinister interest of, in judicature succeeded that of monarch, vi. 11.

— Their creation of, and alteration of laws animadverted on, vi. 13, 529 n, 552-553.

— Conscious of the unfitness of their mode of extracting evidence by affidavit, vi. 40-42.

— The system of deposition evidence kept up by their sinister interest, vi. 42-43.

— Province of juries in respect to circumstantial evidence, invaded by, vi. 50-51.

— Their interest in the evils of exclusion of evidence, vi. 103-105.

— Sinister interest of, occasioning imprisonment for debt, vi. 178.

— will set aside evidence as suspicious which a party would not have the effrontery to call so, vi. 434.

— Legislation for the sole interest of, vi. 445.

— will not decide on any kind of evidence but affidavit, in which they have a sinister interest, vi. 463-464.

Judges—The English—treating perjury as a joke, vi. 465.

— persuading criminal to withdraw plea of guilt, vi. 473.

— daily certify falsehoods, vi. 557.

— instead of providing means of evidence, lie by to take advantage of those who make mistakes, vi. 565.

— Alliance between their sinister interest and that of lawyers, vii. 201-209. See Interest—sinister.

— Admissions as to personal purity of the existing, vii. 204, 212.

— Use to, of the exclusion of litigants from their presence, vii. 232-233.

— Arbitrary powers conferred on, by the principle of nullification, vii. 258-259.

— Influence of party feeling on, vii. 259.

— their interest in the evils of the system of written pleading, vii. 274-275.

— have given themselves arbitrary power through fictions of law, vii. 287.

— Emulation among—extent to which it may operate, vii. 288-289.

— Their privilege of resorting to the literal, or the equitable enforcement of the law at discretion, vii. 308-309.

— Contempt shown by, to the authority of the legislature, vii. 311-315.

— The theory that formalities are a check on, considered, vii. 324.

— General remarks on the manner in which, notwithstanding individual integrity, they are in the mass subject to sinister influences, vii. 329-334.

— Dicta of, on exclusion of evidence, vii. 340-341.

— Diversity of opinion among, as to exclusion of witnesses for improbity, vii. 411.

— Testimony of, would be excluded, were mendacity a just ground for exclusion, vii. 415-420.

— Want of, a regulated and constant system of attendance for—indolence in some departments, and in others health bartered for the power and emolument, ix. 519-521.

— Independence of—The accomplishment of, falsely attributed to George III., x. 548-549.

— Plot by, in Henry VIth's time, to seize land by outlawing, x. 568.

Judge of proposed Dispatch Court—Account of powers, exemptions, and checks proposed for, iii. 311.

— — — Account of provisions in Bill, for locating and remunerating, iii. 308-309.

— — — Provisions for the location of, by the ballot of the suitors, iii. 330-335.

— — — Remuneration of, iii. 335-341.

'To be by salary, not fees, ib.

VOL. XI.

Judge of proposed Dispatch Court—Deputes of—Account of provisions for, iii. 310-311.

— — — Deputes of—Appointment of—to be nominated by judge, and unpaid, iii. 343-344.

— — — Powers, exemptions, and checks of, iii. 345-376. Introductory note with analysis, 345-349. Considerations with respect to end and means, 346. Subject-matters—things, and persons, ib. Powers in, the abstract—Prehensive, Dispositive, and Imperative, 346-347. Applied powers—Sistitive, Evocative, Punitive, Remunerative, Satisfactive, Self-extensive, Self-regulative, 347-348. Operators, time, purposes, occasions, 348. Provision for stopping proceedings in original court, 348-349. Provision for requisite authority over persons, things, and instruments, 349. Prehensive and dispositive power, ib. Provision for transference of documents from Equity court, 350-362. When transmission not made, prehensors authorized to take, with power to overcome obstacles, obstructions, &c., 352-353. Prehension of things intrinsically valuable by way of execution, with the order of preference in which they should be taken, 354-355. Counter-security, 356. Consignment of property in dispute, 356-357. Discretionary power to judge, 357. Protection to him from interference, ib. Punishment for obstructions and deception, with exemplifications, 357-358. Considerations as to evil-consciousness, and heedlessness, in measuring punishment, 358. Prehension and incarceration of offenders, 358-359. Limits of coercion, 359. Modes of punishment, 360. Persons at whose instance it may proceed, ib. Considerations as to the efficacy of punishment with relation to the gain by the offence, the affluence of the party, &c., ib. English practice, 361-362 n. Power to award damages without jury, 362-363. Evidence to be elicited from any quarter and in any form, 364-365. Power to proffer expense of evidence which he thinks good and not otherwise obtainable, 366-367. Power in relation to questions divided between Equity and Ecclesiastical courts, 367. The same authority over any common law courts as the Equity court would have had, ib. Plan for judge making rules for carrying out the system, subject to disallowance by Crown or either House of Parliament, 367-368. Reasons for the measure to be stated by judge, and in disallowance, reason, or statement that none assigned, 369. The power inclusive of that of making rules and orders, ib. No objection to such regulation, that it is con-

M *

trary to statute, 370-371. Obstructions by other courts null, 371. Habeas corpus may be sued out, but not to give power to disincarcerate, 371-374. Punishment for corruption, oppression, or extortion by the judge, 374. General remarks on the temper in which the established judicatories would be likely to treat the proposed powers of the judge, 375-376.

Judge of proposed Dispatch Court—Grounds of decision for, iii. 388-390.

— — — Method of dealing with questions and observations of, *ib.* 418.

— — — Power of, in regulating the amount of penalties, iii. 426-427, 427-428 n.

Judges—Auxiliary, in proposed Dispatch Court, to perform the functions of the master, adjust divisions, &c., iii. 395-406.

Judge-Advocate—The duties of, in Courts-martial, ix. 419-422.

Judge-Appellate. Nature and functions of a, ix. 466-467.

— — To give opinion as to integrity, &c., of judge-immediate, in reversing his decrees, ii. 168.

— — Proceedings before, ii. 166-167.

Judge and Co. The use of the expression explained and vindicated, v. 369.

Judges-Immediate—Provisions specially regarding, in the Constitutional Code, as distinct from those applicable to the Judiciary collectively, ix. 541-544;—

— — Night attendance of, ix. 541-542. Cases of crime or calamity, 541. Performs duty of Registrar, in minuting, &c., *ib.* Night registers, and night-attendance registers, *ib.* Arrangements of the night-chamber, rules for admission, &c., 541-542.

— — Out-door attendance, ix. 542-544. Purposes enumerated, 542. Maximizing the instructiveness of evidence—converting oral into real by inspection, 542-543. Preservation of evidence from depredation, 543. Prevention of damage in operation through calamity, or delinquency, *ib.* Incidental out-door registry, with heads of entry, 543-544.

— — Deputes of—permanent and occasional—Provision for, in Constitutional Code, ix. 544-554. *See* Deputes.

Judges—Police, of the metropolis—Sir Robert Peel's plan for raising the salaries of, criticised, v. 328-348.

Judges—Single-seated—Reasons for employment of, in preference to many, iv. 325-328. Responsibility, reputation, promptitude, certainty and clearness, absence of dispute, &c., 325. Economy, *ib.* Confusion from multitude of judges (unless where one chosen for duty, and the multiplicity abandoned) illustrated in the examination of witnesses, &c., 326. Reasons for the partiality to numbers dis-

played in the French National Assembly, 326-327. Prejudices arising out of an epigram by Montesquieu, 327-328.

Judges—Single-seated—The superior adaptation of, to judicial duties farther considered, v. 555-556. Dependence on public opinion, 555. No person to shift responsibility on, *ib.* No person to share odium with him, *ib.* No person in his own position to support him in class prejudices, *ib.* Cannot give effectuation to a bad opinion without committing himself, *ib.* No one to share his merit in doing right, 555-556. His reputation rests on his acts, 556. Less arbitrary power, *ib.* What renders plurality necessary to a legislature does not apply, *ib.* More intelligence and exertion, *ib.* Promptitude, *ib.* Any advantages that are real in a numerous judicatory may be secured by a numerous auditory, *ib.* Where plurality of heads wanted for investigation, &c., may be had by appeals, *ib.* Saving of delay and expense, *ib.*

— — — Reasons for, as expounded in Constitutional Code, ix. 470-473.

— — — The principle of, urged in "Scotch Reform," v. 18-22.

Judge-made-law—characterized as a quasi-command, iii. 223.

— — — Origin and progress of, vii. 197, 261.

— — — Effect of, in counteracting the Legislature, iii. 280-283.

— — — View of the encroachments of, iii. 370 n.

— — — Specimen of, in the enlargement of the law of conspiracy by Mansfield and Ellenborough, v. 248-249.

— — — when on the merits has some analogy with justice, but when not on the merits is the strongest case of ex-post-facto law, v. 477-478.

— — — Examples of the false inferences of, vi. 53-57.

— — — Indeterminateness and other defects of, in regard to evidence, characterized, vi. 142.

— — — Justice purchased under, vi. 101.

— — — casually animadverted on, v. 5, 235, 339, 354, 374 n, 500; vi. 107, 109, 112, 113, 150, 391, 552; vii. 195 n, 447 n; ix. 8-9, 322, 480; x. 575.

Judgment—A faculty of the mind necessary to the teacher and the learner, viii. 76.

— — The liability of, to be operated upon by interest, i. 217-218.

— — as an operation of Logic, viii. 225.

— — Private. Those who feel unfit to exercise, instead of being humble, are intolerant, ii. 392-393.

— — Private. Blackstone against the right of, i. 230.

Judgment—Acts of, overlooked, and referred to mere operations of the senses, viii. 320-321.

— The. How influenced in political matters, iii. 448-449.

— The. How far under the dominion of the will, vii. 107-108.

Judgment (judicial)—Various grounds of, vi. 7 n.

— in one case, how far evidence in another, vii. 170-173.

— by default renders pleading conclusive evidence, vi. 23 ; vii. 246-249, 545-547, 551-552.

— Plaintiff should not have, without producing evidence, vii. 547.

— by consent, vi. 480-481.

— See Decree.

Judication with relation to procedure, ii. 27-28.

Judicatory—The attributes of a, in respect to ruling interest, functions, and operations, viii. 563-564.

— Plan of a, to be called the Court of Lords' Delegates, v. 55-60.

— Inquiry, for collecting evidence in relation to legislative projects, as a department of the Constitutional Code, ix. 181-188. See Legislature.

Judicatories—Intercourse between, in procedure between parties distant from each other, ii. 99-103.

— Account-taking. Proposal for, ii. 181-182.

— Appellate. Provisions regarding, in Constitutional Code, ix. 585-588. See Appellate Judicatories.

— Official—The Public-opinion Tribunal compared with the, viii. 561-572. See Public Opinion.

Judicature—Origin of, vii. 197-198.

— General view of the ends of, ii. 8-11.

Extent of measures for security of forthcomingness, 8. Publicity a security, ib. Sinister interest, and its influence, 9. Maximization of redress, and minimization of hardship, ib. Means to these ends, ib. Punishment for evil consciousness or temerity by suitor, ib. Eleemosynary assistance to litigants, 9. Presence of parties at the court, 10. Means of execution, definitive, and provisional, ib. Means of probation, 10-11. Means of communication with parties, &c., 11.

— Ends of, apt and unapt, ii. 11-15. Former, the ends of justice, 11. Actual ends of judicature in England, and their cause, 11-12. Proper end with regard to number of suits—Maximization of good—Minimization of bad, 12. How lawyer's interest opposed to this, 13. Absurd practice of consulting those interested against reforms about them, ib. Consultation of Lawyers and Judges an illustration, 13-15.

Judicature—Establishment of a Court of, for deciding in differences between nations, ii. 552-554.

— Reasons why there should only be a single judge to each, iv. 325-328 ; v. 555-556. See Judges—Single-seated.

— Uniformity in, obtainable by a Central Court of Appeal, iv. 348-349.

— Mechanical—substituted to Mental—a grievance charged in Petition for justice, v. 472-473.

— Relation of evidence to, vi. 7-8.

— Relation of, to law, vi. 7.

— Collateral ends of, defined, vi. 12 n †.

— How far the vices of, are the effect of design, vii. 210-211.

— Natural system of. See Natural System.

— should always be preceded by regulation, vi. 529 n.

— Proper ends of, vi. 8-9. Divided into positive and negative, ib.

— False but practised ends of, vi. 10-11.

— Ends of, opposite to the ends of justice, vii. 199-201.

— Evils resulting from the power of ;—direct and collateral, vi. 9-10.

— List of devices for promoting the ends of, at the expense of ends of justice, vii. 225-226.

— Mechanical, as a device of the Technical System of Procedure, vii. 246-249.

— as a branch of Ethics—Position of, in the Encyclopedical Sketch of Art and Science, viii. 95.

— Evil influence of Monarchy on, from the patronage of the Bench, ix. 142-143.

— Technical system of. See Technical System.

Judicatures—Military—Provision for, in Constitutional Code, ix. 392-395. See Defensive Force.

Judicial application—in the Principles of procedure, ii. 33-49. See Application.

Judicial authority—Subordination of to the legislative in a free country, ix. 119-124.

Judicial book-keeping—System of, vii. 63-64, 595-596.

Judicial offices—Use of record of the transactions at, vi. 76-77.

— — Official evidence as furnished by, vi. 561-566. See Official Evidence.

Judicial procedure. See Judicature ; Procedure.

Judicial registration—System of, proposed, vi. 330.

Judicial services—Nature of, vi. 210.

— — Those that are independent of the conferring a new right, vi. 9 n †.

Judicial committee of the Privy Council—Formation of, x. 431.

Judicial communication, with relation to procedure, ii. 52-57. See Communication.

- Judicial Establishment in France—The author's draught of a code for, proposed as a succedaneum to that of the committee of the National Assembly, iv. 287-304 ;—
- — — Courts of justice in general with relation to, iv. 287-289. Fountain of justice, 287. Election of judges, ib. Justice to be gratis, ib. No taxes on justice, ib. Judges not to be legislators, ib. Rules derivable from their decrees to be law till legislatively superseded, ib. Judges to have no regulating power, ib. ; but power of provisional settlement of novel points, ib. ; and may suspend laws, reporting to the Legislature and superior courts, 287-288. Judges to report where literal execution of the law produces inconvenience, 288. Judges to enforce acts of subordinate legislatures if within their sphere, ib. Judicial office to be for life, ib. Procedure public, ib. Litigants to appear by themselves or counsel, ib. Monopolies of law practice abolished, ib. Parties to appear personally, ib. Privileges as to jurisdiction abolished, ib. Power of evocation to be provided for, ib. System of procedure and of penal law to be framed, 288-289.
- — — Distribution and graduation of courts in, iv. 289. Parish and district courts, ib. Appeal, ib. Single-seated courts, ib. Jurisdiction universal in their territory, save as to courts-martial, maritime and ecclesiastical jurisdiction, and power of representative assemblies to preserve order where they are sitting, ib. Pursuer and defender general, ib. Deputies to these and to the judges, ib.
- — — Judges of the ordinary courts of, iv. 289-294. *Appointment, continuance, power, and rank*, 289-290. Election, 289. Fixed age and amount of experience, 289-290. Vacancies of upper grades to be filled from lower, and lowest grade from deputies, 290. Office to be for life except as excepted, ib. Power over all persons for enforcement of decrees, ib. Rank in his own and other jurisdictions, ib. Judge to have no collateral occupation, ib. No vote or influence at elections, ib. *Pay*, 290-291. Expense to lie on the district, 290. Patriotic auction, ib. Inventory of qualifications to be distributed among electors, 290-291. Inventory of private fortune, which liable to a rateable deduction, 291. Full salary to continue in case of amotion without forfeiture, 291. *Attendance*, 291-292. Judgment seat never to be vacant in ordinary courts during the judicial day, or in appeal courts when there are cases for hearing, ib. *Pay* to be daily and for daily attendance, 292. *Oath of office*, 292-293. *Deputies*, 293-294. Duty and power, 293.
- No pay, ib. Principal responsible, ib. Oath and attendance, 294. Occasional deputies for particular duties, ib. Shifting of causes to be avoided, ib. *Responsibility*, ib. Grades of punishment for malversation, ib.
- Judicial Establishment in France—Jurisdiction in, iv. 294-296. Natural and occasional court, 294. Causes as to immoveable property to the court of the subject matter, 294-295. Other causes to be begun in jurisdiction of defendant, 295. Arrangements for preponderant convenience, including consideration of the wealth of parties, ib. Liabilities of plaintiffs purposely occasioning inconvenience, ib. Convenience of all parties to be considered, ib. Facilities for a mutual choice of a court, ib. Causes of citizens arising beyond the territory belong to defendant's jurisdiction, ib. Provision for orders of foreign courts, ib. Arrangement where judge admits cause of partiality, or it is suspected, 295-296. Provisions against pushing extraneous business on a court to the prejudice of the regular, ib.
- — — Parish Court according to, iv. 296-298. Clergyman to be natural judge, where not superseded by regular, 296-297. District assembly may appoint regular judge, 297. Office for life, under reservations, ib. Evocation power, ib. Pursuer-general to look to the interests of criminal justice in District Courts, ib. Cases in which Parish judge should remit to District, 297-298. Place of Judicature, 298.
- — — Immediate District Court according to, iv. 298-299. Immediate judicial power, conjunctly with Parish judge, 298. Cases in which no appeal from it, except on requisition from specified classes of persons, 298-299. Provisional execution during appeal, with precautions, 299. Punishment for irreparable damage, ib.
- — — District Court of Appeal according to, iv. 299.
- — — Department Court according to, iv. 299-300.
- — — Metropolitan Court according to, iv. 300. Constitution, ib. No appeal from, except with complaint of misbehaviour, ib.
- — — National Assembly Court according to, iv. 300.
- — — Pursuer-generals according to, iv. 300-301. Duty in civil matters to the nation, the crown, and poor litigants, 300. Duty in Penal causes, 300-301. Oath of office, 301. Farther regulations correspondent with those applicable to judges, ib.
- — — Defender-generals according to, iv. 301.

Judicial Establishment in France—Arrangements as to secret causes according to, iv. 301-303. Classification of cases, where peace and honour of families concerned, 301-302.

— — — Provision for bearing the expense of Pauper litigations according to, iv. 303.

— — — Trial by Jury according to, iv. 303-304; only by way of rehearing, and that under restrictions, *ib.* Arrangements for trial, 304.

— — — The code for, by the National Assembly committee, compared with the author's, and commented on, iv. 305-406.

— — — How the draught of a code for, was acknowledged in France, x. 223-224.

Judicial faculty—Application of Methodization to the assistance of, viii. 273.

— — as one of the faculties giving substance to discourse, viii. 300.

Judicial Forms—Fallacy that they are the shields of liberty, exposed, viii. 478-482.

Judicial independence. The true principles of, iv. 362-363.

Judicial iniquity—Extent of the alarm created by, i. 76.

Judicial Inspector, as an officer, in the Constitutional Code, ix. 467.

— — Provision for, in Constitutional Code, ix. 569-570.

Judicial Oaths—Practice of receiving, repugnant to the precepts of Jesus, v. 219-220.

— — How far different in their nature and power of obligation from the merely promissary, v. 218.

— — See Oath.

Judicial oppression on the part of a pursuer — Counter-security against, ii.*105-110.

Judicial powers—Application usually made of the term, criticised, iii. 198. Various operations embraced, *ib.*

Judicial Procedure. Principles of, ii. 5-181. See Procedure.

Judicial Services. Nature of, ii. 71.

Judicial transfer to defendant's judicatory to receive his statement, ii. 115-116.

Judicial trust—Breach of, as an offence, i. 132-133 n.

Judiciary Collectively—Provisions regarding, in Constitutional Code, ix. 454-541 ;

— — Preliminary observations, ix. 454-456. Indignation created in those who have a sinister interest in existing systems, 454. Connexion of judicial establishment with procedure, 454-455. Oppressiveness obviated in that department by throwing all burdens on the party in the wrong, 455. Elements of injustice in existing systems—Taxes on justice, fees, unapproachableness of Judicatures, &c., 455-456.

— — Excepted Judicatories, ix. 456-459.

What included in the term **Judicatory**, 456. The excepted are **Legislational** and **Military Judicatories**, 457. How far proceedings in military, necessarily distinct from those in other Judicatories, *ib.* Courts in practice, but without reason, excepted—Audit Courts and Courts of Claims, 457-458. Reasons for employing the word **Judicatory** instead of **Court**, which is ambiguous, and has corrupt uses, 458-459.

Judiciary Collectively—Actors in the Judicial theatre, ix. 459-464. **Judiciary applicant**—principal or assistant, 459. Party proffering service—either aid-tenderer or informant, 459-460. Judge's functions—Pre-interpretative, and Non-contestational-evidence-elicitation, 460. Pursuer and Defendant, *ib.* Incompletely and completely constituted suits, *ib.* Former where the place of one of the parties is occupied by the judge, *ib.* Sources of division, with correspondent species and denominations of assistance in litiscontestation, 460-461. Different chains of Judicial assistants, 461-462. Redundant **Judiciary assistants** in practice—Special pleaders, at, and under the bar, 462. Equity Draughtsmen, 462-463. Quantity of redundant and mendacious matter prepared by, *ib.* Necessity of the parties' own presence—opposite practice created under sinister interest, 463-464.

— — **Judiciary Functionaries**, ix. 464-467. Enumeration of, as divided into **Magisterial** and **Ministerial**, 464-465. **Magisterial**—Functions of the Judge, 465; Registrar, *ib.*; Government Advocate, *ib.*; Eleemosynary Advocate, *ib.*; Quasi-Jury, 465-466. **Ministerial**—**Judiciary Messenger**, 466; **Prehensor**, *ib.*; Door-keeper, *ib.*; Guard, *ib.*; Jailor, *ib.*; Quasi-licitor, *ib.*; Vendue Master, *ib.*; Justice Minister, 467; **Judicial Inspector**, *ib.*; Local Headman, *ib.*; Local Headman's Registrar, *ib.* Cases in which an obligation or a duty on persons at large to assist Judicatures, *ib.*

— — Grades of Judicatories, ix. 468-470. Immediate judicatory in each sub-district, 468. Appellate in each district, *ib.* Reasons for appeal—security of aptitude by supervisance of ability, checks on corruption, &c., incitement to diligence, &c., 468-469. Reasons for not more than two grades—Expense and delay, coupled with absence of satisfactory certainty, 469. Reasons for giving the right in all sorts of suits, 469-470.

— — Numbers in a judicatory, ix. 470-473. Only one, 470. Reason the same as in the ministerial department, with additional control from the open discussion, *ib.* Exceptions—the Legislature,

Quasi-jury, and Military courts, *ib.* Fallacy that number gives responsibility, 471. Encourages indolence and torpor, *ib.* Occasions expense and delay, by concentrating the judges who should be distributed over the country, *ib.* Number of judges in the French supreme court—in that case, however, perhaps a succedaneum for a worse method of spending the money, 471-472. Number of judges in English practice—contradictions—sometimes one, sometimes several employed—one or the other system must be wrong, 472-473. House of Lords and Justices of Peace—both subject to the objection of being unlimited in number, *ib.*

Judiciary Collectively—Fields of service, *ix.* 473-475. Districts and subdistricts, 473. Subdistricts such that a person may walk to the justice-chamber and return within twenty-four hours, 473-474. Economy in the numerousness and dispersal of the tribunals, 474. Appellate judicatories—approachability less necessary, as no new evidence or pleadings to be elicited, *ib.* In a country like England, should be in the metropolis, *ib.* Except in the specially excepted judicatories—no distribution of suits among different classes of courts: all judicatories immediate and appellate competent to all cases, 475.

— Intercommunity of judicial service, *ix.* 476-479. Power of invasion—or power on the part of a judge in whose territory operation has commenced to follow it up against persons and things beyond it, 476. Precautions, 476-477. Instances of incompatibility between the operations of the different judicatories, 477. Jurisdiction-adjustive function, *ib.* Intercommunity of jurisdiction—Reconciliation of this with the partition into local jurisdictions, 477-478. Distinction as between an originating or home, and a casual or extraneous judicatory, 478-479.

— Functions common to judges, *ix.* 479-481. Non-distinctive functions, or those which judges have in common with other officials, 479. Distinctive or judicative functions, *ib.* Pearly self-exercised, or exercised through others, *ib.* The Transmissive function analyzed, 479-480. The several mandates that may be issued, 480. The Judicative or Appropriately-executive function, 480-481.

— Elementary functions of judges, &c., *ix.* 481-483. Auditive, Lective, Interrogative, Commentative, Ratiocinative, Opinative, Imperative, Recordative, Directive, Incidentally-requisitive, Incidentally-receptive, and Incidentally-informative, 481-482. Functions appertaining exclusively to appellate judge—the simply Confirmative, Nullificative, Reversive, Substitutive,

Modificative, Suspensive, Accelerative, Sistitive, and Retrotransmissive, 482-483.

Judiciary Collectively—Self-suppletive function, *ix.* 483-486. Obligation to appoint a depute, 483-484. Depute has not the power of presenting an act of the Legislature as unconstitutional, nor the locative and dislocative powers, 484. Responsibility for depute, *ib.* Method of appointment, *ib.* Deputes occasional, in case of emergency, *ib.* How depute displaceable, 485. All magisterial functionaries exercise the function, *ib.* Proved that this the only system giving sufficiency without superfluity, *ib.* Illustration of the value set upon judicial distinction and power—Courts of Conscience, Danish Reconciliation Courts, Justices of Peace, *ib.* Other inducements to the depute—Prospect of succeeding to the principal, official education, &c., 485-486.

— Sedative function of judges, *ix.* 486-487. For putting down disturbance in court, 486. Elimination, Imprisonment, security for good behaviour, &c., 486-487. Physical means of preventing disturbance where it is necessary to keep the disturber as an accused party or otherwise in court, 487.

— Aid-compelling function of judges, *ix.* 487-489. Purposes for which it may be necessary to demand extrinsic aid, 487-488. Note of the exceptions to the general responsibility of all persons to obey the call, 488. Method of demanding the services of the military power, 488. To belong not only to judges but to other magisterial officers, 488-489.

— Justice for the helpless, *ix.* 489-493. Impossibility of preparing a system which shall totally exclude the risk of expense, 489. Necessity, therefore, of protection to the indigent and powerless from oppressive operations of the rich, 489-490. The expense natural and factitious—latter should be extirpated, 490. Least oppressive incidence of the necessary expense, *ib.* Establishment of an equal-justice fund, 490-491. The regular branch composed of penalties on malversation—juridical vexation and juridical falsehood, 490-491. Such funds should not go to the support of the establishment, the services of which are to the Public at large, 491-492. Supplemental branch—deficiencies supplied from other public sources, 492. Voluntary contributions, and the circumstances that may induce to the making them, *ib.* Precautions against subscriptions and combinations under this sanction, *ib.* Deficiency of existing systems in providing justice for the helpless, 493.

— Publicity, recordation, and publication, provided for, *ix.* 493-494.

Judiciary Collectively—Secret intercourse obviated, ix. 494. Provision for public mention of any communications to a judge, tending to influence him, ib.

— **Partiality obviated**, ix. 494-496. Where judge has an interest—his duty to transfer to another judge, or to a depute, 494-495. Method of trying the question whether there is partiality, 495. Transference where necessary by Appellate Judge, ib. Absence of any check in existing systems—the highest and most powerful judicatories completely exempt in England, 496.

— **Migration**, ix. 496-500. Applies to judges, and Government and Eleemosynary advocates—to prevent their forming prejudicial local connexions, 496. No more than three years and a fraction in one place, ib. Migration, periodical and incidental, 496-497. Causes of incidental migration, 497. Direction of Justice Minister, ib. Considerations for the adjustment of distance of migration, ib. Arrangements for separation between judges and Government advocates, &c., to prevent their having an understanding with the judge, 497-498. Annual judicial-service calendar—method of keeping heads of entry, &c., 498. Incidental Location and Migration Report, 498-499. Migration not to apply as a matter of course, to the Registrar, 499. Inconvenience that may arise from shifting causes from judge to judge—deputation and other arrangements in the code obviate, 499-500.

— **Incidental Complaint-book**, ix. 500-502. Occasions of complaint—vituperative language, menaces, interruption, &c., by the judge, 500. Registrar to keep the book, and make entries at party's requisition, ib. Exemplars to be distributed, 500-501. Also complaint if judge fail to correct misconduct of a party, 501. Provision for reading and inspection, and notifying corrections, ib. Responsibility of the complainant, ib. Neglect of like provisions, whether against or in favour of the judge, in existing systems, 501-502.

— **Judges' Contested-Interpretation-reporting Function**, ix. 502-504. Promotion of uniformity of decision, and improvement, 502. In case of an appeal, on ground of difference of opinion as to the interpretation of a law, the judge by appropriate form to give his interpretation as opposed to the appellant's, and his opinion whether or not alteration required, 502-503. Contested-Interpretation Report to be prepared by Registrar, and exemplars distributed, 503. Judge-appellate's Contested-Interpretation Report,

503-504. Justice Minister to prepare like report for the Legislature, 504. Committee of the Legislature to act, ib. Annual Interpretation Diversity Report and Table, ib. Provision for conflicting amendments, ib.

Judiciary Collectively—Judges' Eventually-
emendative Function, ix. 504-508. A proposed amendment of the law, prepared by the judge, consulting the Government and Eleemosynary advocates, 504-505. Transmission to Judge-appellate and Justice Minister, 505. Distribution of exemplars, ib. Mode for an individual to suggest amendment to a judge, ib. Notice to Legislation Minister, ib. Adoption, if no disapproval by Judge-appellate or Justice Minister, and no motion for consideration in the House, ib. Principles on which the judge to act to parties proposing amendments, 505-506. Matters for consideration as to the merits of amendments, 506. Objection answered, that the plan would give facilities for factious attempts—easily quashed in the Legislature, 506-507. Topics which are least adapted, compared with those which are most so, to this operation, 507. No retroactive punishment in case of a new offence, ib. Profit of the offence, however, may be abstracted, and compensation given to sufferer, 507-508.

— **Sistitive or Execution-staying Function of Judges**, ix. 508-511. To be used where the judge thinks that giving execution to the letter of the law is contrary to its spirit, and that the emendative function should be used, 508. Method of issuing decrees on the occasion, ib. Conditions warranting the exercise, ib. Proceedings for adjustment of the state of the case as to evidence, &c., 508-509. Considerations as to the feeling of the instability of the law that might be raised if the practice improperly used, 509. To be employed only in those cases where the execution of the law would shake confidence by its palpable injustice—illustrations, Merchant of Venice, &c., ib. Strained construction a greater evil than any producible by the system, 509-510. Objections answered as to the danger of judicial interference with the province of Legislation, 510. No necessity to extend the power to Judges-appellate and the Justice Minister, 510-511.

— **Preinterpretative function of judges**, ix. 511-512. Used where a person wishes to have an opinion from the judge of the practical operation of a portion of the law, 511. Use of the emendative function if necessary, ib. Precautions against injury to other interests, and frivolous inquiries, 511-512. Uses of the plan, 512.

Judiciary Collectively—Application of the several functions, viz., the Contested-Interpretation-Reporting, the Eventually-Emendative, the Sistitive, and the Pre-interpretative, to the several codes of the Pannomion and to Unwritten Law, ix. 512-514. Advantages—Symmetry of the Laws, Melioration, Prevention of arbitrary authority of Judges, Uniform Interpretation, Relief from the cost of the Opinion system, 512-513. Substance given to unwritten law, 513. Contrasted with the lax system of deciding according to the merits or not at discretion, 514.

— **Non-Contestational-Evidence-Elicitation Function of Judges**, ix. 514-515. Reception and Registration of evidence to whatsoever legal purposes it may eventually be made applicable, ib.

— **Attendance of the Judges and other functionaries**, ix. 515-521. Always a judge sitting in the immediate judicatory, 515. Day duty and night duty, ib. Home duty and out-door duty, ib. Division into three terms of eight hours, ib. Days of relaxation to the Judge—Immediate—Sundays, and a limited number of others, ib. Weekly, monthly, and annual Attendance-register, 515-516. Individual-service calendar, 516. Payment daily on attendance, ib. Attendance of Government and Eleemosynary Advocates—with special exceptions the same as judges', ib. Attendance of deputies, 517. Police judges in England—Attendance system only partially met by, ib. Interruptions in the ordinary courts in England, ib. Attendance in France, 517-518. Modifications of the general rule to climate and season, 518. Distinction between appointed service and cases of urgency—generally police, ib. Attendance requisite for the latter sometimes when no direct business doing, 518-519. Adaptation of the attendance exacted to that which the climate and habits of the people prescribe to the labour of working people, 519. System in England—instead of well-regulated attendance, indolence in the lower departments, and labour detrimental to health bartered for the power and emolument of the higher, 519-520. Oppression from periods of inaction and delay of justice, 520-521.

— **Term of service of Judges and other officers**, ix. 521-522. Judges, Government and Eleemosynary Advocates, and Registrars, to hold for life, ib. Reason why not during good behaviour—such a system establishes dependence, and ill behaviour, 522.

— **Remuneration of Judges and other officers**, ix. 522-525. Form for filling up amount of salaries, 522-523. No other

money to be received in any form, either by the judge himself or others through him, 523. Means of inquiry into suspected corruption, ib. Prospect of promotion an item of remuneration, ib. Illustrations of extortion—France and Scotland, 523-524. Considerations as to the effect of the pecuniary competition in making the judiciary to a certain extent unpaid, ib. Unpopularity of the unpaid magistracy in England—just, but not occasioned by their being unpaid, 524. So long as there are fees to justices' clerks, the worst sort of remuneration paid, ib. General reasons against fees—expense of justice should rather be borne by those who are saved the trouble of going to law than by litigants, 524-525.

Judiciary Collectively—Who locable as judges and other officials, ix. 525-529. For appointment as judge immediate—service as judge depute, 525. An original preparation period for the commencement of the system, 525-526. Service must be actual—not nominal, ib. Individual-service calendars, and annual aggregate-service calendar, for preserving proof of experience, 526-527. Method of proclaiming proposed appointment of judge, and allowing any party to carry on an investigation into his previous official character, 527. Propriety of excluding from the bench certain classes, on account of the risk of bias, or other ground of inaptitude, ib. Those who have served as Government or Eleemosynary Advocates, 527-528. Professional lawyers, 528. How the system of official instruction designed by the code to be brought into operation, ib. Application to Government and Eleemosynary Advocates, and Registrars, Immediate and Appellate, and to the Government Advocate-general and his Registrar, 528-529.

— **Method of location or appointment of judges and other officers of**, ix. 529-532. Judges, Government and Eleemosynary Advocates, and Registrars, appointed by Justice Minister, 529. Reasons for not placing the function, like the election of legislators, in the hands of the people—want of time and aptitude, risk of making judges tools of party leaders, 529-530. Sufficient beneficial control created by giving the people the power of displacement, 530. Similar reasons for not giving the power to the Legislature, ib. Reasons for not giving it to the executive chief—keeping the judges independent of one possessing so much power, 530-531. Plan for procuring a supply of judges on the occasion of emergency from unusual influx of business, 531. Contrast with existing practice, 531-532.

Judiciary Collectively—How the Judges, Government and Eleemosynary Advocates, and Registrars of, are removeable from office, ix. 532. By the Justice Minister, ib. Also in the same manner as a member of the Legislature is removeable—viz., by the Supreme Constitutive, &c., ib.

— Inaugural declaration of judges and other officers of, ix. 532-535. Use—to direct public attention to points of conduct, 532-533. Execution and effect to the law promised, 533. Impartiality in the exercise of power, ib. Bribery, corruption, and secret intercourse with applicants eschewed, ib. Publicity in the general case, and secrecy where incumbent, ib. To abstain from revenge for obloquy, and self-service, ib. No interference with elections, 534. Constancy of attendance, ib. Despatch without precipitation, ib. Minimization of expense, ib. Restraint of impatience, ib. Avoidance of partiality in appointment of deputies, ib. No false statements to mislead witnesses, ib. Urbanity to parties and witnesses, ib. Repression of rudeness by lawyers or others, ib. Assistance to other judges in the execution of the laws, 534-535. Explanations, so far as time allows, of the reasons of proceedings for the instruction of the public, 535. Performance of the functions sanctioned by the code for judicial amendment of the laws, &c., ib. Publication of the declaration, ib.

— Securities for appropriate aptitude of judges and other officers, ix. 535-537. Publicity—accommodation for spectators in the court-rooms, 535-536. Persons necessarily present enumerated, and extent of the publicity obtained through them estimated, 536. Persons for whom accommodation to be made for the separate purpose of publicity, ib. List of benefits in the shape of impartiality, diligence, constancy of attendance, &c., to be reaped, and of evils to be excluded, 536-537. Securities applying to deputies only, 537. Judges appellate, ib. Eleemosynary Advocates, ib.

— Judiciary apparatus, ix. 537-538. Things necessary to enable the judiciary to discharge its functions, ib. List of them, 538.

— Justice chambers for, ix. 538-539. Provided at expense of Subdistrict, 538. Arrangements for promoting the necessary, and preventing sinister intercourse, 538-539. Disposal of witnesses, 539. Admonitory legends to be hung up, ib. General rules for construction of a justice-chamber, ib. Stations of the officials, ib.

— Judiciary habiliments, ix. 540-541. Means of discrimination that a judge may

at once be recognised—not instruments of factitious dignity, 540. No necessity for any description of robes to command respect—the most highly-respected judicatories without them, 540-541.

Judiciary Establishment—Outline of the, attached to Principles of Procedure, ii. 22-23.

Judiciary Establishment—Prayer of Petition for justice in relation to, v. 498-500. In all cases two stages of jurisdiction, 498. Military and Ecclesiastical the only exceptional jurisdictions, ib. Vicinity of courts, ib. Single judges, ib. Deputies, ib. Daily sittings, ib. Sufficient supply of ministerial officers, ib. Salaries instead of fees, 498-499. Paid by the public, 499. Judge to remain in one place only three years, ib. Influence of public opinion provided for, ib. Jury for recapitulatory hearing, ib. Juries to exercise all judicial functions but the effectutive, and to exercise the effectutive as a restraint on the judge in political cases, ib. Number to be lessened and grand jury abolished, ib. Appellate judicatories, 499-500. Government and Eleemosynary Advocates, ib. A justice minister, who to hear accusations against judges and to be himself judged in the House of Lords, ib. Restriction of criminal jurisdiction of the Lords, ib. Decisions not to be acted on as precedents, ib.

Judiciary Guard—an officer in the Constitutional Code, ix. 466.

Judiciary Messengers—Provisions for, in Constitutional Code, ix. 466, 636-637. *See* Messengers.

Judiciary Prehensors—Provisions for, in Constitutional Code, ix. 466, 637-640.

Judiciary Registrars, Immediate and Appellate—Provisions for, in Constitutional Code, ix. 579-585. *See* Registrars.

Jugglers—Theory of credibility illustrated from, vii. 94.

Junctiana proposal for uniting the Atlantic and Pacific, by means of a joint-stock company, ii. 561-571. Practicability of the plan—Track of Lake Nicaragua, 561-562. Arrangements and plan of agreement—Territory to be occupied, benefits, and obligations, 562-563. Relation of the company to Mexico and Columbia, and the sacrifices and advantages of the plan in regard to these States, 563-567. The water communication an advantage to Mexico and Columbia, in conjunction with the United States, 567-568. Protection of the United States required, to give satisfaction to capitalists, 568-570. Inducements the United States would have to grant protection, 570-571. Other nations no inducement to withhold acquiescence, 571.

Junction-of-interests principle—The, by which the sinister interests of rulers being destroyed, they have no interest but what is common to all alike, ix. 6-7.

Junius' letters—How far their popularity indebted to secrecy, x. 79.

— Remarks on the authorship of, x. 564.

— noticed, i. 250; x. 82.

Juramentum—expurgatorium, and suppletorium, vi. 322; vii. 70.

Juridical vexation—the proper name for the offence to which conspiracy was first applied, v. 248.

— and falsehood—Punishment of, in the Constitutional Code, ix. 491.

JURISDICTION—Partition of, with relation to procedure, ii. 27-28.

— Principles of limitation and distribution of, in connexion with International Law, ii. 540-544.

— divided into Potential, Actual, and Rightful, ii. 541, 543.

— Extension of, over the natives of foreign states—Circumstances that may create, ii. 543-544. Circumstances tending to control, ib.

— On the mode of parcelling out, iv. 328-338. Time occupied by judge, and local distance of suitor, the causes for a partition, 328. Distribution necessary, ib. The purely local may be a cause without the temporal, ib. Division wherever the value of the time spent in going to court greater than the cost of so saving it, 329. Demand for publicity may limit the division, ib. Appeal a method of reconciling the two, ib. All courts should be so situated, that the most remote parties can appear at them and return in a day, ib. Necessity of personal attendance does not extend to appeals, 329-330. Expense should be borne by whole country, 330. Whether ministers might not be local judges, ib. Where the extent of population requires more than one court, they should be as distant as may be, ib. Evils of the metaphysical system—viz., partition of jurisdictions according to the nature of the cause, 331. Complexity and confusion, ib. Great multitude of courts to give a sufficient supply of all kinds in all places, 331-332. Increased bulk of the law, 332. Difficulty of suitors knowing the court to resort to, ib. Increases the trade of lawyers and expense of justice, ib. Pecuniary criterion, by which causes of certain value to certain courts, still worse, 333. Gives a false measure of value—small pecuniary causes may be more important than large to the community and individuals, ib. Hence the legal distinction between regular and summary justice, 333-334. Courts stealing or seising jurisdictions from each other, 334. Certain pur-

poses for which peculiar tribunals necessitated—Courts-martial, Jurisdiction at sea, Ecclesiastical courts, Representative bodies for preservation of order, 334-335. Demarcation not inconsistent with intercommunity, 335-336. Benefits—convenience as to distance, choice among judicatures (and thence emulation) preventing conflicts among judicatures, protection from partiality, ib. English circuits not a succedaneum, 336-338.

Jurisdiction—Arrangements as to, in Draft of Judicial Establishment for France; iv. 294-296.

— The early conflicts of the English courts for, described, v. 493-496.

— Thefts of, by the courts from each other, vii. 285-287.

— Demarcation of, should be geographical solely, iv. 324.

— Appellate—Essay on, iv. 338-353. *See* Appeal.

— Equity—Origin and extent of, vii. 291-300. Difficulty of definition, 291-292. Substantive law—distinction between legal and equitable estates, 292. Power to do what Law courts could not, 293. Origin of the Chancellor, 294-295. Difficulty of defining logical bounds of his jurisdiction, 295-296. His importation of equity from Rome, 297. Equity a popular term, 297-298. Controlling power, 298-299. Injunctions, 299. Abuses, 299-300.

Jurisdictions—The transference of suits from one to another, and the mischievous effects so produced, v. 473-476, 525-531.

— Splitting of, presented as a grievance in Petition for justice, v. 481-491, 531-533. Physical and logical bounds of jurisdiction—Former should be the sole division, 481-482. Ecclesiastical courts, 482. Exchequer, ib. Chancellor's common law power, ib. Common Pleas, ib. Chancellor's equity power, ib. Equity side of Exchequer, ib. Bankrupt and Insolvency courts, ib. Justices of Peace, single and collective, 483-484. General sessions, 484. Justices on preliminary examinations, ib. Small Debt courts, ib. Besides these, the Military and Ecclesiastical courts, &c., 483. Specimens of farther subdivision as illustrative of the evil, ib. Materials out of which law manufactured in these courts, 484. In Equity courts, trust, fraud, accident, injunction, ib. In Common Law courts, conspiracy, blasphemy, &c., 484-485. Procedure in Ecclesiastical courts founded on calling anything a sin, and adding a punishment called penance, 485-486. Illustration of want of codification in the non-existence of Provisions by common law for these purposes, viz. Trust, 486; Fraud, ib.; Accident, ib.; Injunction of both kinds, 486-

- 487 ; Account, 487 ; Delivery of things in kind, *ib.* ; Fulfilment of obligatory obligations, 488 ; Elicitation of evidence from parties, *ib.* ; Time allotted for elicitation, 488-489 ; Elicitation and recordation for eventual use, 489. Illustrations of the complexity and confusion created—varieties of courts multiplied by the variety of procedure in each, 490-491.
- Jurisdictions**—The splitting of, how productive of groundless arrest for debt, *v.* 491-497.
- The various kinds of which may have cognizance of judicial questions in England, enumerated to the number of forty-eight, *v.* 531.
 - Evils arising from the variety of, *vi.* 134-135.
 - Entanglement of, a device of the technical system, *vii.* 288-305.
 - How far division of, useful, *vii.* 288-290. Geographical limits, 288. Extent to which emulation may operate, 289. Division according to nature of the causes, objected to, 289-290.
 - Law and Equity—Distinctions between, *vii.* 290-291, 511, 514-515.
 - The absurdity of the distinctions between law and equity, and illustration in the quarrel and compromise between, with the results, *vii.* 303-305.
- Jurisprudence**—The Branches of, examined, *i.* 148-154. Expository and Censorial, 148. Authoritative and unauthoritative, *ib.* Local and Universal, 149. Internal and International, *ib.* National and Provincial, 150. Ancient and Living, *ib.* Statute and Customary, *ib.* Civil and Criminal, 150-151. Difficulty of the distinction, 151. Difference between a law and a statute, *ib.* Laws declaratory and coercive, imperative and punitive, 151-152. Use of complex terms, 152. Expository matter, *ib.* Obscurity of the limits of law in various codes, 153. Necessity for a constitutional branch—Absurdity of laws binding down the Legislature, 154.
- Division of writers on, into two classes, *iii.* 158.
 - Technical language of, compared with that of other sciences, *iii.* 269-270.
 - Barbarous state of the Science of, *vii.* 597.
- Jurisprudential law**—Laudation of, a device of the technical system, *vii.* 309-311.
- Contrasted with statute law, *vii.* 309-310.
 - — See Judge-made Law.
- Jurist**—The, a Law Periodical—Account of, *xi.* 35-36.
- Jurists**—Political speculations of the, animadverted on, *iii.* 220.
- JURY**—Distrust of, in the exclusionary rules of evidence, *i.* 489.
- Effect that should be given to judgment of unanimous, as compared with majority's, *ii.* 128.
- Jury**—Power to award damages without intervention of, in proposed Dispatch Court, *iii.* 362-363.
- Star Chamber preferable to a covertly pensioned, as a judicature for libel, *v.* 115-116.
 - A juryless judge preferable to a covertly pensioned, as a judicature for libel, *v.* 116-117.
 - *de medietatu status*—The equity and humanity of the arrangement, *v.* 166.
 - Instance of the bribing of a, *v.* 175 n.
 - Application of the principle of, to school discipline, *viii.* 49.
 - Vicinage of. The proper kind of, *x.* 71.
 - The division of the members of, into three—those having positive belief, those having disbelief, and those neutral; and a table of the possible proportions, in which each opinion may be held among twelve men, *x.* 143-144.
- Juries**—Effect of death-punishment in prompting to acquit, *i.* 450.
- Perjuries of, to prevent injustice in cases of suicide, *i.* 479-480.
 - Findings of, under forty shillings, an argument against death-punishment, *i.* 526-527.
 - Advantages of, more indirect than direct, *ii.* 141.
 - Their inspection of the Judge, to be effectual, should attend every step, *ii.* 145-146.
 - The advantages of, found to rest in publicity, the inducement to the Judge to give reasons, and the extraction of evidence in the best form, *ii.* 147-148.
 - as furnishing schools of justice, *ii.* 149-150.
 - Valuations of property by, for public works, considered, *iv.* 11.
 - The uses and disadvantages of, stated in general terms, *iv.* 324.
 - Utility of, in the belief that in such a fluctuating body no fixed principle of error can perpetuate itself, *iv.* 341 n.
 - Their use when in a proper state, as a check on Judges, *v.* 67-69. The ordinary view, that the Judge is a check on the Jury, reversed, 67. Necessity of independence to this end, 67-68. Species of influences to which they are exposed—understanding over understanding, and will over will, 68. Precautions in their original constitution to protect them—impunity and secrecy, 68-69.
 - Their use as a check on the Judge; how done away by influence, *v.* 69-76. The perpetual propensity which power has to remove checks, 69. Even if submissive, jurors would still interfere with judicial ease, 69-70. Constant wish, therefore, to shake them off, 70. Three modes of influencing—intimidation, corruption, and deception, *ib.* The first incompatible, *ib.* Two methods of corruption—finding people of the disposition requisite, or creating it in

those found, 71. The former simple packing, *ib.* Best method—placing persons over whose interest and welfare the Judge has an influence, *ib.* The power of dismissing the juror an effectual hold, 72. This permanent packing, *ib.* Necessity of disguising the operation, 72-73. No occasion for carrying it farther than to the cases in which the crown and judge have an interest, *ib.* Juries in the old mode of packing caught wild and subdued—by the new mode kept tame, *ib.* Deception, 73-76. Two means—causing them to have a will the same as the Judges, or no will at all—latter the easier, 74. Two means of accomplishing—rendering law incomprehensible, or elevating the estimate of the Judge's knowledge, 75. Corporeal added to these incorporeal instruments in the official habits, &c., of the Judge, *ib.* Influence of judicial condescension, 76.

Juries—Mystery in the early history of, v. 69.

- Unanimity of—increases the corruptive power in the case of special juries, v. 84-88. If the system had been the invention of an enlightened age, a majority would have been adopted—unanimity the work of barbarism, 84-85. Compelling twelve men to be of one opinion by torture, involves mendacity, 85. Means it gives to any one who has an interest to hold out, to rule the verdict, 85-86. Regular corruption exercised in prosecutions for libel, 86. Casual corruption illustrated in the case of a question of smuggling tried in the Exchequer, and a jurymen bribed, 86-88.
- Chief purpose to which influence on, may be made subservient, v. 88-97. If judges were not exposed to the action of sinister interest, juries should be abolished, 88-89. Influences to which judges are liable to be exposed, 89-91. Class partiality, 89. Money—not directly, *ib.* Love of ease and vengeance the principal, 90-91. Influences to which English judges particularly exposed, 91-97.
- Influence on, chiefly employed to crush the liberty of the press, v. 97-101.
- Extent to which the packing of, carried in the Court of Exchequer, v. 101-105.
- The rules by which they are made instruments in the hands of judges for crushing the liberty of the press, v. 105-114.
- Remedies proposed for the corrupt state of the system of, v. 163-186.
- Proposal for restoring the constitution as to, v. 163-175. Existing special jury system in London and Middlesex should be abolished, 163. Objects to be held in view in reform—preservation from corruption, obtaining greatest amount of ap-

titude, minimizing the hardship to the jurors, 164. Mix a few gentlemen with the yeomen on common juries, 164-165. Making special juries half yeomen, half gentlemen, for obviating the influence of partialities of class, &c., 165-167. Compensation—money to the jurors, for journeys and demurrage, 167-168. Fund from which the compensation to be paid—main sum county rates, with partial application of costs in particular cases, 168-170. Inquiry as to means of extending qualified list, 170-171. Means of preventing party from foreknowing his jurymen, 172-173. Case where party chooses his jurors, and case where knowing who they are to be he has access to corrupt them, compared, *ib.* How unanimity increases the facilities for corruption, 174-175. One firm man gained is sufficient, *ib.* Obviated by giving verdict to majority, *ib.* General repeal of all existing acts on the subject, and consolidation of the Jury Code in one act, 175.

Juries—Historical inquiry as to the remuneration of, v. 167-168 n.

- Obligation to serve on, should be imposed on all, except for some cause of exclusion or exemption, v. 171.
- Verdict should be in majority of, v. 174-175.
- State of the system of, in Scotland, when "The Art of Packing" was written, and subsequent alterations, v. 175.
- Proposal for restoring the authority of Parliament in relation to, v. 176-184.
- Indictments for sedition drawn in a manner to influence the passions of, v. 241-261.
- Question if they form the best tribunal for fixing damages? v. 558.
- That they are subdued and subjugated by the judges, a grievance presented in Petition for justice, v. 480-481.
- Functions of, as prayed for in Petition for justice, v. 499.
- Real extent of their province as judges, vi. 50-52.
- Their functions infringed on by the creation of rules of law in circumstantial evidence, vi. 53-57.
- The powers of, invaded by fictions, vii. 287.
- Probative force of circumstantial evidence should be left to the determination of, vi. 51.
- should have every kind of evidence submitted to them, vii. 72, 160, 387-388.
- Effect of vexation to, in the production of evidence, vi. 92-94.
- Forced unanimity of, and findings under the value of 40s., as illustrations of the feebleness of the religious sanction, in the disregard of oaths, ii. 41; vi. 273-274, 311, 314.

Juries—Fallacy of exclusion of butchers from, vii. 61 n.

— Instances of their deciding by lot, vi. 226 n *.

— perform the task of weighing evidence, which judge professes to be unfit for, vii. 530-531.

— Inability of the Common-law courts to act without, vii. 293.

— regulated by judge's charge in pronouncing verdict, vi. 418.

— Form of swearing a witness before, vi. 523.

— *Pett*—Trial of criminal before, vi. 473-474.

— Prosecution of, by attain, vi. 415.

— Verdicts of, on insufficient evidence—New trial against, vii. 164.

— considered as committees of the Public-opinion Tribunal, ix. 41.

— Method of selection of, according to Peel's Act, criticised, ix. 281-282 n.

— The work on the Art of Packing—Fears of the Booksellers to undertake—Romilly's advice to suppress, and Mill's to publish, x. 450-451.

Jury—Grand—Defects of, ii. 105.

— with reference to the Rationale of Procedure, ii. 139-141. Purpose—securing impunity to the ruling classes, 139. Good of the original constitution gone—bad remains, 140. Consisting of gentlemen, to exclusion of yeomen, 140-141.

— Resumé of the evils of, ii. 171.

— Fiat of, required by earlier law, before a criminal could be apprehended, v. 532.

— Procedure before, advantageous when first started, now an evil, ii. 140 ; vi. 375, 472-473.

— Plaintiff gives evidence without cross-examination before, while defendant is not questioned, vi. 467.

— Obstructions of, to justice, make Informations tolerated, vi. 375.

— Secrecy continued in the inquiries of, though it has ceased to be useful, vi. 375.

Jury—Quasi, in "Rationale of Procedure," ii. 141-158. See Quasi-Jury.

— Provisions as to, in Constitutional Code, ix. 465-466, 554-568. See Quasi-Jury.

Juries—Special—Elements of the Art of Packing as applied to, particularly in cases of libel, v. 61-186.

— with reference to the Rationale of Procedure, ii. 138-139.

— a special engine of corruption, v. 76-84. Obscurity of origin, 76. Nomination in right-hand men of the judge—masters, prothonotaries, &c., 76-77. The guinea fee, 77. Influence of the crown in crown cases, of the judge in private, ib.

• The method of selection from the qualified list detailed and examined, 78-79.

So completely hirelings, that the name of the "guinea corps" applied to them, 79. Besides those whose wishes are ostensible to him, many persons in power unknown to the jurymen whose wishes he feels he must not counteract, 80. Limitation of the faculty of discarding, 81. Extent of the field covered by the corruption, 82. Crown causes—libels especially, ib. Injustice of paying this higher class of jurors when lower unpaid, ib. Destructive influence on the constitution, of such a pensioned corps, 83. Treachery of the lawyers who drew the acts, 83-84.

Juries—Special—State of the packing system of, in 1808, v. 118-167.

— State of the system in 1809, v. 157-162.

— in the Exchequer Court. Letter by Sir Richard Philips to Chief Baron Macdonald on the packing of, with the answer and a commentary, v. 121-136.

— Devices by which the corruption of, is supported, v. 136-139. Excluding from the reforming act any term binding on the master, by whom the special jurors chosen, 136-138. The hands of the Sheriffs tied up, 138-139. Concealing the power of nomination, 139.

— Inquiry as to whether they were struck without consent of parties before the 3 Geo. II., v. 140-141.

— Letters to Sir Richard Philips from the Temple and Lincoln's Inn, on the packing of, with comments, v. 143-153.

— Expense of, to the country, and corruption of, by double fees in crown causes, v. 160-162.

— Alterations in the manner of choosing, made or proposed from authority since the "Art of Packing" was published, v. 163 n.

Jury-trial discussed in the Principles of Judicial procedure, ii. 117-138;—

— Jury in general considered, ii. 117-119. Defined, 117. Divided into those for general, and those for particular purposes, 118. Former, petit and grand, ib. Inconveniences and evils, ib. Not to be employed except preponderant necessity, ib. Saving by employing only in appeal, ib. In civil cases, and penal questions between private parties, may be dispensed with, ib. Not so in crimes especially public or constitutional, 119.

— Effects of unanimity, ii. 119-122. Weakens Government, interfering with its vengeance on political offenders, ib.

— In what causes jury should be employed, ii. 122-123. In civil causes by appeal, and in certain penal causes, 122. Cases in which misapplied in England, 122-123.

— Effects of—Advantageous and disadvantageous, ii. 123-127. Where judge

- with his superior qualifications has sufficient moral aptitude, jury useless, 123. Evils of the second degree—alarm, &c., not so great from misdecision of jury as of judge, 123-124. Effect on official aptitude of judge, 124. Effect on juries, 125. Benefits would be greater were the law rational, *ib.* Protection against tyranny of judge, 126.
- Jury-trial—Unimpowered jury proposed in, ii. 127. Use for countries to which ordinary system could not be introduced, *ib.* Procedure before, *ib.*
- — What persons should be capable of serving on, ii. 127-129. Comparison with elective franchise, and reasons for exceptions which do not occur there, 127-128. Forms in which they may stray, 128. Methods of removing the danger, 128-129.
 - — Appointment of jury, ii. 129-131. Chance, 129. Packing defined, 130. Should be selected out of the voters, (on the virtually universal system,) or out of a large select body, *ib.* Action of lot in producing impartiality, 130-131.
 - — Securities for appropriate aptitude of jurymen, ii. 131-132. In Republics—against party feeling, power of dislocation, or challenge, 131. Impossible in monarchy to avoid misdecision from party spirit, *ib.* Effects of corruption or intimidation, *ib.* Unanimity system, 132. How far votes may be concealed by ballot where majority decide, *ib.*
 - — Number of jurymen, and proportion necessary to command the verdict, ii. 132-138. The smallest number that can fulfil the purpose, 132. Evils of punishing innocent greater than of acquitting guilty, 133. Evils correspondent of forced unanimity—torture, perjury, &c., 133-135. Unanimity bad when the laws are good—serviceable when they are bad, 135. Application of unanimity to the judges, &c., 136. Method of applying the jury to such a community as British India, 137-138.
 - — The opinion that it should be in no case in the first resort—in all cases in the second, v. 29-41. A security for good decision, but troublesome, and so should only be resorted to when there is complaint of misdecision, 29-30. Cases in which jury-trial physically impossible—others in which it is prudentially impossible, 31. Particular inconveniences in adjusting the receipt of evidence to the jury system, 32-34. An advantage in the judge having examined and arranged the evidence before it goes to the jury, 34. Case can be decomposed and sent to several juries if expedient, 34-35. Such the advantages where the procedure in the first instance natural—the delays, &c., of the technical system enhance the advantage of being rid of a jury, 35-36. Employment of jurors as mere puppets, 37. The good that might be accomplished by the investigatorial power, with illustrations, 37-38. Inadequacy of examinations *de bene esse* to fill a gap, 38-39. Lord Somers' defective plan for amendment, 40-41.
- Jury-trial—Effect of strict limitation of the times for, ii. 75-76.
- — Whether it would be a suitable institution in British India, i. 178-179. *
 - — Hints for the application of, to British India, x. 468.
 - — Letter to the author urging introduction of, in British India, ii. 182-185.
 - — Letter from Sir A. Johnston on the practice of, in Ceylon, ii. 185-188.
 - — The proposal to add, to the procedure of the Court of Session in Scotland, considered, v. 29-47. *See* Session.
 - — Multiplicity of matters crowded into, v. 469.
 - — Characteristics of extraction of evidence in, vi. 35.
 - — Origin of, in the proceedings of Freeholders, vi. 373.
 - — in England—Perjury a necessary ingredient in, vi. 314.
 - — Compression of evidence by, into the time of a single sitting, vi. 104; vii. 538-539.
 - — in civil cases—Nature of procedure in, vi. 479-480.
 - — The advantages of, proceed from the system of oral examination, vi. 506-507. The praise that should be confined to this feature bestowed on the system, *ib.*
 - — Excellence of the method of collecting evidence in, vi. 35.
- Jurors—Their consciences weakened and enslaved by their taking an oath and submitting to the judge's interpretation of its obligations, v. 204-205.
- Exhortation to, in the case of the King against Edmonds, v. 239-251.
 - The oaths of, a grievance complained of in the Petition for justice, v. 462-467. Putting an oath to men, to declare according to their conscience, and then torturing them till they all decide one way, 462-463. A means by which a resolute man can force any verdict he pleases, 463-464. Weakens the force of the religious sanction, 464. Even those who resolve to stand out are accessory to making the others, whom they expect to yield, commit perjury, 464-465. Object in the unanimity² to drown the voice of a minority, 465. The system being a prostration of law, is useful in the case of tyrannical political laws, 466-467.
 - Oaths of. Argument for the inefficacy

- of, abridged, in the Abridged Petition for justice, v. 515.
- Jurors**—Disabilities to be, a consequence of excommunication, i. 514.
- Special and Common—Difference of their position, vi. 94 n. ‡.
 - Special and Common—Inequality of the treatment of, commented on, v. 144 n.
- Justice**—Unmeaning use of the word, i. 58 n. †.
- Absurdity of appeals to first principles of, iii. 388 n. *.
 - Love of. Component elements of, i. 210. *
 - Ends of, in connexion with those of judicature, ii. 11.
 - Rendering—a phrase comprehensive of all measures for effectuating the substantive law, ii. 20.
 - Real and apparent—Distinction between, and necessity of supporting the latter in judicial procedure, ii. 20-21.
 - Main and collateral ends of, distinguished, v. 445.
 - Direct and collateral ends of, to be balanced by judge, ii. 29.
 - Direct and collateral ends of, distinguished in Scotch Reform, v. 5.
 - Obstruction of—How to be dealt with, ii. 46.
 - Schools of. How the jury system may furnish, ii. 149-150.
 - Taxes on—Rewards to injustice, ii. 211.
 - Litigants support, for the public benefit, ii. 243.
 - The expense of, prevents application for it, ii. 431, 574.
 - Protest against taxes that add to the cost of, ii. 573-583; vii. 199-201, 377-378.
 - Administrators of—Principle of giving them high damages for groundless prosecutions, ii. 508.
 - Ministers of. Punishment of abuse of power by, ii. 513.
 - Offences against, as a subdivision of public offences, i. 101-103; iii. 169. Divided into those of the officers of justice, and those of private parties, ib.
 - *Genera* of offences against, enumerated, i. 132-133 n.
 - Sale and denial of, by the system of judicial fees, iii. 337.
 - Penal—Objects of, Example, Reformation, Incapacitation, Satisfaction, and Economy, iv. 174. *See* Punishment.
 - Fiction that the King is the fountain of, discussed, iv. 305-306.
 - Gratis administration of, a commended feature in the Code of the French National Assembly, iv. 309-310.
 - Publicity the soul of, illustrated in the English system, iv. 316-317.
 - Summary, as distinguished by lawyers from regular, iv. 333-334.
- Justice may sleep when injustice sleeps, iv. 356.
- The costliness of, in answer to Mr Justice Ashhurst's dictum, that it is attainable by all, v. 233-234.
 - Cheap and dear—Opinion of lawyers that the former bad, the latter good, vii. 323.
 - Ends of, on the occasion of judicature, vi. 8-12.
 - Ends of, sacrificed to the ends of judicature, vi. 422, 430; vii. 199-201.
 - Neither the collateral nor the real ends of, followed in the English system of evidence, vi. 505-506.
 - Connexion of exclusion of evidence with the ends of, vii. 335-336.
 - Disregard shown to the ends of, by exclusion of evidence, vii. 336-338.
 - Bought and sold under judge-made law, vi. 101, 134.
 - Courts of—Publicity with reference to, vi. 351-380.
 - Idea of a system of pleading adapted to the ends of, vii. 270-272.
 - Love of—Extent of its effect on testimony, vi. 227; vii. 570.
 - Evasions of, through quirks, vii. 257.
 - The kind of, on which the public depend, not abstract, but apparent, vii. 154 n.
 - Fewness of the days on which it is administered in England, vii. 51 n. †.
 - Delay of. Maxims adduced in favour of, controverted, viii. 475-482. "That it is the price of security"—proceeds on the mistake that time without action in it brings about justice, 475-476. "Danger of precipitation"—involves a confusion between promptitude and precipitation—the latter often occasioned rather than averted by delay, 476-478. That "the judicial forms are the shields of liberty"—adduced in answer, the delay, vexation, and expense occasioned by them, 478-482.
 - Course of, should not be interrupted by vacations, &c., iii. 406.
 - Parliamentary committee of—its uselessness, vi. 183-184.
- Justice and Codification Petitions, being forms proposed for signature by all persons whose desire it is to see justice no longer sold, delayed, or denied, &c., v. 437-548.*
- Justice**—Petition for—Prayer of, in relation to the Judiciary Establishment, v. 498-500.
- Petition for—Prayer of, in relation to procedure, v. 500-503.
 - Abridged Petition for, v. 507-534. Expense, 507. Delay, 507-508. Fees, 508. Devices by which the state of things occasioned—1st. Exclusion of parties from presence of judge, 508-509. 2d. Unintelligible language, 509. 3d. Superabundance

of written pleadings, 509-510. Mendacity licensed, rewarded, compelled, and by judge practised—Bill in Equity and Fictions, 510-513. Oaths—their needlessness, mischievousness, and unchristianity, in the cases of witnesses and jurymen, 513-517. Delay in groundless and boundless lengths established, 516-521. Precipitation necessitated by the delay, 521-522. Blind fixation of times for judicial operations, and chicaneries about notice—Proposal of plan for securing accessibility to persons concerned in litigations, 522-524. Mechanical substituted to mental judicature, 524-525. Mischievous transference of suits—with an estimate of the extent to which transference may be necessary, 525-531. Decision apart from the merits, 531. Juries subdued, *ib.* Jurisdiction split and spliced—enumeration of forty-eight tribunals to which reference may be made, 531-533. Result—groundless arrest for debt, 533. Supplement on oaths, 533-534.

Justice—More abridged Petition for;—Sale and denial of justice, abuses in equity, in action from vacations, &c., falsehood necessitated—Fictions—Fees for fictitious duties, *v.* 534-538.

Justice-aiding functions of Local Headman by Constitutional Code, *ix.* 617.

Justice Minister—Provisions regarding, in the Constitutional Code, *ix.* 597-612;—

— Fields of service and functions, *ix.* 597-598. Over all the territory of the state, 597. The locative, suspensive, dislocative, and translatiue functions as to judges, *ib.* Self-suppletive function as to his own office, *ib.* Procurative, custodative, &c., functions as to things belonging to his department, *ib.* Visitative, 598. Inspecitive, statistic, and recordative, *ib.* Control over judges in relation to their legislative suggestions, *ib.* Conservative function—as to the wording of the law, *ib.*

— Visitative function of, *ix.* 598-599. Inspection visits to the judicatories, 598. Beneficial objects and business of the visits, *ib.* Periodical and occasional visits considered, and their respective merits, 598-599. Union of the two, 599. Visitation of Local Headmen and their Registrars, *ib.*

— Judicative function, *ix.* 599-600. Complaints of denial of justice in appellate judicatories, 599. Methods of dismissal of judges—a gentle form in case of deficiency in ability, 599-600.

— Dispunitive function, *ix.* 600-607. Remission of punishment, 600. Different grades of remission, *ib.* Relative times of, in relation to the times of prosecution and conviction, *ib.* Grounds of, *ib.* Dis-

covery of disculpative evidence as a ground, 601. Expected service by precautionary information on delinquencies, *ib.* Expected service against a foreign power, *ib.* Expected service in obviating calamity, *ib.* Expected service by communication of useful invention, *ib.* Service actually rendered in these shapes, *ib.* Cases of a diplomatic and political character, in which it will not be in the province of the Justice Minister to decide whether the grounds are sufficient for remission, 601-602. Service by information as to co-delinquents—Points to be attended to in the bargain, 602-603. Indirect methods of giving impunity examined—Cases of pecuniary penalty which less than what may be made through the offence, 603. Cases where the Legislature is compelled by public opinion to make bad laws, such as prohibitions from circulating peculiar opinions—the laws kept dormant by limiting the right of prosecution to the Public Prosecutor, 603-604. The irrational system of nullification—criminal let loose because a copying clerk has made a mistake, 604. Sole justification of remission the same as that of punishment—The public good, *ib.* Inquiry to be made by the Justice Minister in the exercise of his office, 604-605. Should always be after conviction, 605. Not to be confounded with the pardon-power, which predicates previous tyranny, 605-606. Pardon-power instrument of gaining monarchical popularity, *ib.* Evil effects of the English system, where so many are condemned to death and pardoned—production of arbitrary power, 606-607.

Justice Minister — Jurisdiction-adjustive function of, *ix.* 607. Settlement of questions as to the judicial functionary who is to exercise a disputed power, *ib.* Examples, *ib.*

— Term of service, *ix.* 607-608. For life—with the causes of removal specially proved for, *ib.*

— Remuneration of—including official residence, and indemnity for outlay, *ix.* 608.

— Attendance of—the same as that of judge-immediate, *ix.* 608.

— Who locable as, *ix.* 608. Service as judge-immediate and as judge-appellate, *ib.* Temporary arrangements in the interval, till persons can be qualified, *ib.*

— How located, *ix.* 608-610. By the Legislature, 608-609. Reasons for appointment not being in the hands of the constitutive authority—though they may make up their mind as to the qualifications of a representative, have not the means of doing so as to the functions of a Justice

- Minister, 609. Reasons for not putting in the hands of the executive chief—too much concentration of power, facility of oppression, &c., 609-610.
- Justice Minister—How dislocable, ix. 610. By the Prime minister, and otherwise as a member of the Legislature is, ib.
- — Securities for appropriate aptitude, ix. 610-612. His probation as a judge, 610. Dislocability—Punibility by the Legislature, ib. Chief difficulty is in neutralizing or preventing corruptive intercourse with the Prime minister, 610-611.² Method of preventing communication, in the adjustment of their edifices, 611. Procuring notoriety to their conduct and proceedings—a trumpeter—dignity a compensation, 611-612.
- Justices of Peace. Various sorts of jurisdiction of, and their origin, v. 482-483; vii. 235 n.
- — Authority of, to examine felons, an exception from the exclusionary rules as to evidence, vi. 109, 417 n, 471-472; vii. 459-460, 497, 500, 508.
- — In case of felony, must record the evidence, ii. 181 n; vi. 410 n.
- — prohibited from taking certain affidavits on oath, vi. 304 n.
- — Decisions of, quashed on pretences, vi. 464; vii. 314.
- — might be employed as temporary recorders, vi. 81.
- — Precedent for employing, as temporary recorders, vi. 82.
- — Courts of, vi. 35-36.
- — Nature of the initial examinations by, ii. 181; vi. 428.
- — of the metropolis—Alteration in the constitution of, vii. 327-328.
- — might act as honorary notaries, vi. 530.
- — Registration of regularly recurring facts by, proposed, vi. 568.
- — Recording of convictions by, enforced, vi. 414.
- — Natural procedure before, iii. 329; vii. 321, 323.
- — Summary procedure before, in certain cases of theft, vii. 504-506.
- — in Scotland—Arrest by, of debtor in *meditationes fugæ*, vi. 334 n.
- — Circumstances under which the power of apprehending criminals without authority of Grand Jury was given them by statute, v. 532-533.
- — popularly censured as the unpaid magistracy, but defect arises from other causes than their being unpaid, ix. 524.
- — Clerks of, receiving fees, makes the system instead of unpaid, a tax on justice, ix. 524.
- — Illustrate the value set on judicial power and distinction, ix. 485.

- Justices of Peace—a mistake to say they serve for nothing, iv. 376.
- — Trading, compared with fee'd judges, v. 340.
- — Detrimental transference of suits from—a grievance charged in Petition for justice, v. 473-474.
- — Casual remarks on, iv. 353 n, 379; v. 37.
- Justices—Police, of the Thames—Heads of a Bill for regulating the authority of, x. 331-333.
- Justiciability—Avoidance of, as affording evidence of delinquency, vii. 50-53.
- Principles of security for, iii. 205.
- Justification of the means by the end—Fallacy of the principle of, ii. 469-470.
- Justinian—Arrangement of the works published under, iii. 162-163.

K

- Kames—Lord, quoted on Custom-house oaths, i. 567.
- — His Historical Law Tracts noticed, i. 264 n.
- — His misconception of the use of Bifurcate or exhaustive division, in Logic, viii. 115-116.
- Kämpfer's History of Japan—Impressions on Bentham from the perusal of, in boyhood, x. 22.
- Kempel, a Hungarian—Proposal by, to improve the steam-engine, viii. 135 n.
- Kenrick—Dr—His support of the probability of inventing the perpetual motion, viii. 147.
- Kent's Commentaries on the Laws of the United States—Remarks on, x. 559-560.
- Kenyon—Lord—His dicta on Libel Law, v. 243.
- — on exclusion of evidence, vii. 340.
- — noticed, v. 93 n, 159; vi. 389-391; vii. 482 n; x. 16, 45, 60.
- Keppel—Admiral Lord—His connexion with a negotiation between Lord North and the Rockingham, x. 102-103.
- — Reference to the trial of, vii. 521.
- Kersaint—Deputy—Imprisonment of, x. 286.
- Key to the operations in Geometry and Algebra—Utility of, for the purposes of useful intellectual instruction, viii. 169-177.
- Kind—Restitution in, as satisfaction to sufferers by offences, i. 374-375.
- Kindness, Amicableness, &c., as designative of motives, i. 202.
- Application of the principle of, to conversation, x. 518-519.
- King—Blackstone on the attributes of the, i. 235-236 n.
- and People—Foundation on which the

- connexion between, has been laid by Blackstone and others, considered, i. 269-270.
- King**—Blackstone's confusions regarding the division of the Legislative and Executive power of, i. 278-279.
- How far the legislative power of, can be called independent, i. 279.
 - Fictions of law regarding the, i. 508.
 - Pardon-power a dangerous instrument in the hands of a, i. 529.
 - Uses to which he can employ the coronation oath, ii. 117-118 n, 408-409; v. 193.
 - "can do no wrong." Effect of the principle, ii. 422.
 - "can do no wrong"—Probable original meaning of the maxim, vii. 519.
 - Use of the word, instead of Monarch, inconvenient, iii. 563 n.
 - The alleged prerogative of, to grant charters to colonies containing legislative powers, or to legislate for them without consent of Parliament, examined, iv. 258-269.
 - Fiction of his being the fountain of justice, discussed, iv. 305-306.
 - Fiction of his being the executive power, iv. 306.
 - How his feudal powers came into the hands of the judges, iv. 306.
 - Veto of, on legislative measures—its effect, iv. 308-309.
 - Form for his approbation of official appointments, as exemplified in that of the Dispatch Court judge, iii. 334.
 - Circuits invented by, to increase his power, iv. 337-338.
 - Power of, shared by the aristocracy since the Revolution, iv. 446-447.
 - The origin of his practice of issuing writs to try cases, and appease clamorous complainants, v. 446.
 - Design against the life of, not proveable by the evidence that will convict of an ordinary crime, vii. 527.
 - not above the influence of shame in this country, vi. 326.
 - How the Public-opinion Tribunal can operate against, viii. 562.
 - The impossibility of creating responsibility in the person of a, ix. 10.
 - The power lodged in the hands of, an incitement to treason, ix. 39.
 - Costliness to a nation of the Chief Magistrate having so high a title, ix. 88-89.
 - The government of a—Nature and influence of, examined in connexion with the Constitutional Code, ix. 127-141. *See* Monarchy: Operative—Supreme.
 - *v. Whitaker*—Case of, cited, v. 82.
- King (The) against Edmonds and others**—*Brief remarks tending to show the untenability of this indictment*, v. 239-251.
- King (The) against Sir Charles Wolley, Bart., and Joseph Harrison, schoolmaster**—*Brief remarks tending to show the untenability of this indictment*, v. 253-261.
- Kings**—Necessary expense of, ii. 245.
- Crimes of—Allusions to, an instance of the fallacy of sweeping classifications, ii. 450.
 - Vulgar errors as to the injustice of, ii. 539.
 - Disclamation of a wish to abolish, iii. 441, 451.
 - The mischief they may do by patronage and power—especially when they have the making of a second legislative chamber, iv. 429-432.
 - The number of, that have been insane, an illustration of the falsity of the qualities attributed to them, ix. 131-132.
 - adopted prerogations, &c, of Parliament, to get rid of opposition and trouble, ix. 164-165.
 - *See* Monarch.
- King's Bench**—Sinister interest of chief-justice and marshal of, ii. 14.
- Power of, to convert expressions into offences, ii. 126.
 - Double remedies in, iii. 361 n.
 - Its power of issuing a mandamus to a corporation, iv. 316.
 - Arrangement of causes in, iv. 322.
 - Chief-justice of—Profit to, by sham writs of error, v. 93 n.
 - The raw materials out of which the law promulgated by, enumerated, v. 484-485.
 - Depredation affected by the privileges of the Rules of, v. 544.
 - Admission of the public to, vi. 377.
 - taking on itself the powers of legislation, vi. 414.
 - enumeration and examination of sham writs of error to, vii. 214-216.
 - Business stolen by, through instrumentality of fictions, v. 493; vii. 285.
 - Mandamus in, vii. 293.
 - Affidavit evidence in, vi. 463, 478.
 - Jurisdiction of, vii. 297.
 - History of imprisonment for debt in, vi. 179; vii. 382 n.
 - History of the form of obtaining delay in, on ground of absence of witness, vii. 359.
 - has perverted statutes awarding treble costs, vii. 529.
 - Bentham takes his seat as a student in, x. 45.
- King's death**—Imagining—Absurdity of, as a definition of treason, x. 321.
- King's evil**—Cure of, noticed, vii. 93.
- King's speeches**—Practice of the Commons reading a bill before they are considered, ii. 335.
- Radical Reform attacked in, iii. 602-603.
 - Characteristics of, viii. 577.

King—Governor. Attempt of, to ameliorate New South Wales, iv. 181.
 King—Mr. Mention of, xi. 134.
 King—Mr R. Mention of, x. 170.
 Kingdoms—the three physical—Subalternation and division as applicable to, viii. 268-269.
 Kingston (Duchess of)—Case of, cited, vi. 491.
 Kinnaird—Douglas—A dinner party with, x. 576.
 Kippis—Dr Andrew, noticed, xi. 74.
 Klaproth the chemist—Visit to, by Bentham, x. 180.
 Kliüger—M.—a lawyer of Warsaw—Latin letter to, regarding the pension granted by Stanislaus to Mrs Lind, x. 358-359.
 Klopstock—made citizen of France, x. 281.
 Kneller—Sir Godfrey—noticed, v. 301.
 Knighthood—Orders of, as rewards, ii. 194-195.
 Knowledge—Meaning of the word, vi. 230.
 — as a circumstance influencing sensibility, i. 23.
 — Spread of, has brought men nearer an equality, i. 269.
 — that may be rendered injurious—Hindrance of the acquisition of, as an indirect means of preventing offences, i. 536-538.
 Diffusion of knowledge not hurtful, 536.
 The worst offences require little knowledge, and those of barbarism more dangerous than those of refinement, 536-537.
 It is where knowledge confined to a few that it has vitiated and weakened nations, 537.
 Liberty of the Press, 538.
 — as to the means by which deceptions are practised—Promulgation of, recommended, i. 553-554.
 — Application of, to the Arts and Sciences, ii. 253.
 — Popular institutions for diffusion of, ii. 256-260.
 — Propagation of, one of the forms in which trade may be benefited by Government interference, iii. 35, 71.
 — Dependence of happiness on, vi. 264.
 — of the course of nature—Influence it has on belief, vii. 91-98.
 — of law. Kept from those in whom ignorance of it punished, vi. 519.
 — of the necessity of formalities, necessary to the presumption of spuriousness in their omission, vi. 518.
 — Intellectual—The advantages of, viii. 8-16. *See* Learning.
 — Jealousy of the higher classes, of extension of to the lower, viii. 19-21.
 — The impracticability of an arbitrary fixed division of the field of, viii. 27.
 — Useful—Number of branches of, taught—an advantage of the Chrestomathic education plan, viii. 11.
 — Useful. Services to the collection and

propagation of, by a good system of Pauper management through the field of observation so supplied, viii. 424-428. *See* Pauper Management.
 Knowledge—*See* Instruction : Learning.
 Knowledge qualification—The, for the franchise, iii. 464-465, 470, 560, 565.
 — — Application of, to jurymen, ii. 127, 144.
 Knox—Vicesimus—Opinion of, against university oaths, v. 196 n, 227-228.
 — — noticed, ii. 468.
 Koe—John Herbert—Letters to, x. 484, 485.
 — — casually noticed, x. 62, 382, 411, 444, 452, 453.
 Koran—The, characterized, i. 551.
 — — and its commentaries, as a collection of laws, compared with the English Books of Reports, viii. 573-574.
 Kosciusko—Thaddeus, made citizen of France, x. 281.
 Kotchubey—Count—his furtherance of Bentham's opinions in Russia, x. 440, 445.
 Kremenschuk in Russia—Bentham's visit to, x. 159.

L

Laborious or active punishment, i. 437-441.
 Can only be accomplished by influence of another punishment over the will, 437-438.
 Instances, 438.
 Specific and indiscriminate, 439.
 Convertibility to profit, ib.
 Frugality, 439-440.
 Equability, 440.
 Variability, ib.
 Exemplarity, ib.
 Subserviency to reformation, ib.
 Analogy, 440-441.
 Popularity, 441.
 Different kinds of labour which should be preferred, ib.
 Laborious restraint—Hatred of criminals for, i. 450.
 Labour—in what cases it is a reforming punishment, i. 94.*
 — Fatigue, &c., the pains of, with the corresponding interest and motives, i. 204.
 — Love of—Character generally attributed to, as a motive, i. 214.
 — The protection of the law—the inducement to, i. 307-308.
 — Casualties to which subsistence from, liable, i. 314.
 — The sources of uncertainty in, as a means of subsistence, ix. 13.
 — Free—More productive than that of slave's, i. 345, 441.
 — Restrictions on, illustrated, ii. 225.
 — Bad effects of meddling with the wages of, whether by fixing them, or by bringing them to a level by parochial relief, viii. 441-444.
 — in Penitentiaries—Conduciveness of, to reformation, i. 499.

Labour—Interest of, in good government, ii. 424.

- mental and physical—both eschewed by rank, ii. 481.
- Relation of, to capital, iii. 36 n †.
- Effect of machinery on the employment of capital on, iii. 39.
- the source of wealth, iii. 45.
- Wages of, regulated by relation of capital to number of labourers, iii. 61.
- Inefficacy of attempts to fix the wages of, iii. 66.
- Means of increasing the efficacy of, iii. 67-68. Increase of skill and saving of time—division of labour, 67. Cheap prime movers, ib. Simplification of processes, ib. Saving materials, ib. Improvement of products, ib. Diminution of expense of carriage, ib. Machines, 67-68.
- The real balance of trade is in an excess of the produce of, iii. 70.
- Reference of enlargement of the currency to increase of employment for, iii. 141.
- The mass of capacity for, an element in the limitation of production, iii. 295.
- Means of extracting, from felons—application of punishment and reward, iv. 12-13.
- Hard—A fallacy to suppose it can be forced in prison—only to be obtained by reward, iv. 144.
- Duration of, with reference to Prison discipline, iv. 18.
- of convicts—Arrangements as to, under the Panopticon plan, iv. 41-53. *See* Panopticon.
- Choice of species of in prisons, urged, iv. 49-51.
- not less reforming by being profitable, iv. 50.
- Division of, in Prison discipline, iv. 51.
- Means of extracting, from convicts, by the Panopticon system, iv. 54-55.
- of convicts—Use of so adjusting, that it teaches them a trade to exercise when liberated, iv. 55.
- Useless—in prison discipline, reprobated as uneconomical and unreforming, iv. 143-145.
- Time to be daily spent in, consistently with health, considered, iv. 163.
- The, of Liberated Prisoners—Plan for encouraging, iv. 165-171.
- Division of, exhibited in the administration of justice, iv. 388.
- Aversion to—How far the interest in, admits of measurement, vii. 568-569.
- Application of estimates of the value of, in connexion with that of rearing and supporting the labourer, to Poor-law arrangements, viii. 367.
- Adaptation of, to Pauper management, viii. 381-385. *See* Pauper Management.
- Rules for the alternation of, with rest, and

with other occupations, in relation to Pauper management, viii. 396.

Labour—the original fund of subsistence, ix. 13.

- Cessation from, as an element of felicity, ix. 15.

Labourers. Increasing the number of, iii. 68. Banish prejudices against labour, ib. Find employment for the unproductive—prisoners, beggars, &c., ib. Inducements substituted for coercion, ib.

- Increase of, an advantage, while that of consumers an evil, iii. 73-74.
- the persons who would suffer most by a general division of property, iii. 608.
- Agricultural. Their inability to provide for their families, viii. 442.
- Irish—in New York. Plan for the instruction and the improvement of the moral character of, x. 500-501.

Labouring classes—List of exigencies operating on, and corresponding forms of supply, viii. 407.

- — Considerations as to the sources of frugality at the disposal of, and utility of Savings Banks to, viii. 407-417.
- — Plan for advantageously boarding the children of, in connexion with the Poor-law, viii. 421-424.
- — enjoy, in common with the rich, the principal elements of felicity, ix. 15-17.
- — looked on with chief disgust by those members of the aristocracy who do them most injury, ix. 62.

Labouring and embracing jurymen—The offence of, vii. 49 n.

La Combe—M. „ Bentham's French lessons from, x. 9.

Lafayette—addressed on the subject of a Chamber of Peers in France, iv. 419.

- Letters to, xi. 1-2, 60.
- Letter from, on the state of France—Standing armies, &c., xi. 3-5.
- Proclamation of, in 1830, noticed, xi. 56.
- Anecdotes of the American Revolution by, x. 526-527.
- casually noticed, x. 93, 262, 286, 551; xi. 3.

La Grange, noticed, viii. 37.

Lally—Allusion to the case of, i. 417.

Lampoons—as an instrument by which the public may protect itself when honours are unworthily conferred, ix. 92.

Lancastrian system of Education—The economy of, viii. 14.

- — Corporal punishment unknown in, viii. 15-16.
- — Power of the arrangements of, for tuition, viii. 16.
- — Success of, exemplified in one of the classes of the High School of Edinburgh, viii. 61-63.
- — casually noticed, ii. 206 n, 468.

Land laid bare by the retreat of water—how to be appropriated, i. 328.

Land—Nature of title to, and subjects embraced in it, i. 327-328.

— Obstacles to the alienation of, considered, i. 333-334.

— Colonial system discourages the cultivation of, at home, ii. 547.

— Effect of American war on the value of, iii. 9-10.

— Increase of, by colonization, considered, iii. 52-57.

— Advantageousness of, as an employment for capital, when not interfered with, iii. 68-69.

— Continuance of feudal usages with regard to, vii. 383 n.

— Distinction between, and moveables, in regard to wills, vi. 533, 542-551. Alteration of the law, 533 n*.

— Mode of designation of, for the purpose of registration of contracts, vi. 579.

— Rights in—Necessity of permanent evidence as to, vi. 60-61.

— Functions of Local Headman as to settlement of boundaries, &c., of, by Constitutional Code, ix. 619.

— Inquiry as to the means of estimating the gross profits from the culture of, x. 373-374.

— Sale of. Evil of taxing, i. 319.

Lands—Crown. Application of public competition to the leasing of, v. 325-328.

Land-marks—Removal of—Forgery of real evidence, vii. 17-18.

Land-surveying—defined and located in the Chrestomathic system of Instruction, viii. 34.

Landed estates—large—Disadvantages of, to agriculture, iii. 68-69.

Landed interest—Prevalence of the, as exhibited in the Corn-laws, iii. 99-100.

Landed property—Examination of Mr Humphrey's Outline of a Code as to, v. 389-416. See Real Property.

— Outline of a Plan of a general Register of, v. 417-435.

— Exemption of, from liability for certain debts, commented on, vi. 85 n.

Landed proprietors—Interest of, to oppose innovation, ii. 420.

— Interests of, as opposed to reform, iii. 532-533.

Landlord and tenant—Formalities of contract between, vi. 528-529.

Landlords—Examination of the method in which the influence of, may be employed at elections, iii. 479-482.

— Their power of despotism over tenants, iv. 435.

— as aids to monarchical despotism, ii. 283.

LANGUAGE—The signs of, in connexion with the origin, viii. 227-229. First embodiment of ideas verbal—writing and other signs followed, ib. Importance of considering both the transitive and the in-

transitive use of language—latter necessary for embodying thoughts, 228-229.

Language—Essay on, viii. 294-338.

— Note on, by editor, explaining state of MSS., &c., viii. 294.

— Uses to which in the character of ends it is directed, viii. 297-298. Practical and speculative, 297. Modes of discourse, uses of language, operations, occasions of use, properties, degrees of the properties, means of possessing the properties, the parts of speech, 297-298.

— Definitions preparatory to, viii. 298. Considered as a simple instrument of interchange of ideas, ib. Considered in respect to particular occasions, ib. Considered as expressing the different methods in which different classes of men speak, ib. Most extensive sense—aggregate of the matter of discourse, ib.

— Signs employed in, viii. 298-299. Those of the ear first in use, 298. Common to man and the inferior animals, 298-299. Signs—Evanescent and permanent, 299. Divided also into principal and subsidiary, ib. Subordinate or collateral topics—short-hand, signals, cyphers, signs, ib.

— Subjects of, in discourse, viii. 299-300. See Discourse.

— Uses of, viii. 301-302. Social and solitary use, or transitive and intransitive, 301. In the former it may contain pure information, or information to produce excitement, 301-302.

— Operations which, in the character of an art, are performable in relation to, viii. 302-303. Learning, using, teaching, and ameliorating, 302. Often done conjointly, and mischief in the notion that when one is performed in particular, it excludes performance of the others, 302-303.

— Division and enumeration of properties desirable in a, viii. 303-304. Use of the enumeration, 303. Chance of improvement, ib. Enumeration, 304. The information-regarding, the nation-regarding, and the purpose-regarding, ib.

— Clearness as a property of, viii. 304-305. Exemption from ambiguity and obscurity, ib.

— Conciseness as a property of, viii. 305. Saving of time, clearness, impressiveness, apprehensibility, retainableness, ib. Uses to Law and Posology, ib.

— Facility of utterance, or pronounciability, as a property desirable in, viii. 305.

— Melodiousness or harmoniousness as a property desirable in, viii. 305-306. Positive and negative in amount, ib. Application to poetry and eloquence, 306.

— Ornability or decorability as a property of, viii. 306-307. Presumes the giving ornament to the necessary substance of the discourse, without increasing it, ib.

Language—Impressiveness or force as a property desirable in, viii. 307.

— Dignity as a property desirable in, viii. 307-308. External sign of strength of mind, *ib.* Consists in the absence of the defects of laxity and fumbling, *ib.*

— Mutual relation of the properties desirable and undesirable in, viii. 308-310. Clearness, conciseness, and correctness, as the counter-parts of obscurity, indistinctness, ambiguity, incorrectness, &c., 308-309. Relation of copiousness, conciseness, and tractability, with their opposites, poverty, &c., 309. Relation of copiousness and simplicity, 309-310.

— Comparative estimate of the relative importance of the various properties desirable in, viii. 310-311.

— in the sense of style—Properties desirable in, viii. 311-312.

— Questions applicable to improvements in, viii. 312.

— The alterations in, that may be deemed improvements, enumerated, viii. 312.

— The improvements that take place in, without design, or without a general survey, viii. 312-313. Copiousness and simplicity, *ib.*

— Improvement in—How and by what hands it can be accomplished, viii. 313. Practice, instruction, association, Government authority, *ib.*

— Externally applied instruments of improvement in, viii. 313. For abbreviation, for diffusion, for durability, *ib.*

— Rules for obtaining clearness in, so far as depends upon the choice of words taken singly, viii. 313-316.

— Rules for clearness, and thence impressiveness, in so far as depends on collocation, viii. 316-318.

— Rules for obtaining correctness and completeness in, viii. 318.

— Rules for improving in respect of copiousness, viii. 318.

— Modes of enrichment of, viii. 318-319. Generic names, *ib.* Analogy, 319. Spiritualization, *ib.* Aggregation, *ib.* Importation, *ib.* Filling up of conjugates, *ib.*

— Importation of words from foreign—Advantages of, in increasing the stock, viii. 319-320.

— Thought as the basis of, viii. 320-323. Conveys state of the speaker's mind, 320. Conveys judgment as distinct from perception—judgment frequently erroneous—perception not, 321. Opinions or thoughts embodied in propositions must form the matter of all discourse, 321-322. Among barbarians proposers involved in single words—Interjections a relief of this original language, 322-323. To form sentences into words, and words into syllables and letters, the work of analysis,

323. Use of thus analyzing—to show by the compounds already made how the process may be carried farther, *ib.*

Language—Analytical view of the matter of, as the elements of thought, viii. 320-333. See Thought: Conjugates.

— Relation in, between archetype and type, or between the thing signified and the sign, viii. 331-333.

— Effect of the imperfections of, in bringing reproach on moralists, i. 49 n +

— Dependence of its effect on association, ii. 437.

— Disorder in—Effects of, iii. 171.

— Purity of, prejudice in favour of, an obstacle to improvement, iii. 273-274.

— Additions to, necessary to amplify current stock of ideas, vii. 130.

— unites words with real entities, vi. 237.

— Defectiveness of, for expressing degrees of persuasion, vi. 224, 229-230.

— Difficulty of improving, except where purely scientific, vi. 226-227 n +.

— A theory of, should be comprehended in a system of Logic, viii. 120.

— Technical. Wherein that of law differs from that of other sciences, iii. 269-270.

— Technical legal—Inaptitude and mischievousness of, vii. 280-283.

— Legal—Importance to society of improvement in, and prejudices opposed to, iii. 270-274.

— Unintelligibility of, charged as a device of the technical system, v. 448-449, 509.

— Abridged view of the component parts of, the purposes of, and the Psychological history with relation to the purposes, viii. 186-187.

— Abridged view of the properties desirable in a, viii. 191.

— Mental operations to which it is subservient, viii. 229.

— as the main instrument of all logical operations, viii. 230-231.

— How far exposition of may proceed without the use of, viii. 240.

— The impossibility of freeing from ambiguity illustrated, and the dishonest uses made of the defect, viii. 249-251.

— How far appositeness obtainable in, viii. 290.

— Opinions on, expressed in conversation, x. 569-570.

— A universal—One of the existing languages better suited to, than any new language that could be framed, viii. 150.

Languages—A repulsive branch of education which should be postponed to the more easy, viii. 17.

— Instruction in the nature of—Grammar as introductory to the acquisition of, viii. 33-34.

— Their deficiency in a proper nomenclature for the elements of knowledge, and the reasons, viii. 63-64.

Languages—Dead—Value of, and extent of attention that should be paid to, ii. 258-260.

Lansdowne—William, first marquis of. *See* Shelburne.

Lansdowne—Henry, marquis of—Notices of, in his youth, x. 90, 122.

La Place noticed, viii. 37.

Larceny—Distinction between grand and petty, abolished, vi. 381 n. 2.

Latency and latitancy, as evidence of delinquency, vii. 50, 52-53.

Latin Language—Value of a knowledge of, ii. 258-260.

— How far the acquisition of, useful in the middle ranks, viii. 17.

— unsuited for a treatise on Universal Grammar, viii. 342.

Latin—Law. Blackstone on the use of, i. 235.

Latinity—Specimens of Bentham's early, x. 38-44.

Latitude to judges regarding punishment, i. 516-517.

Laud—(Archbishop)—his explanation of the Oxford oaths criticised, v. 211-212.

— Statutes of, for Oxford, and their effect considered, ii. 260-262.

— noticed, v. 224.

Laudation of corruptions in the judicial system—Evils of, v. 95.

— of jurisprudential law, a device of the technical system, vii. 309-311.

Laudatory Personalities—The fallacy of, ii. 412-413.

Lauderdale—Earl of, noticed, x. 323.

Launey—M. De—his discussion with Frederick the Great on custom-house salaries, ii. 244-245.

Lavoisier noticed, iii. 273; vi. 205, 442.

Lavoisier's Chemistry—Illustration of a clumsy system of signs, viii. 167.

Law—Penal and civil. Difficulty of drawing the line between, i. iv.

— Incapacity to obey, renders case unmeet for punishment, i. 85.

— Limits between the operation of, and that of Private Ethics, i. 142-148.

— Languages which have distinct words for the abstract and concrete senses of, i. 148 n. ||.

— The branches of, i. 148-154. *See* Jurisprudence—Branches of.

— Study of. Reason of repulsiveness, and means of making more interesting, i. 160.

— Study of. How far an acquaintance with the dead languages necessary to, viii. 17.

— Expositor of, distinguished from censor, i. 229.

— Free censure of the defects of, should be encouraged rather than checked, i. 230-231.

— Ignorance of, among the people—Blackstone's exultation in, i. 235.

Law—Statute and common. The distinction between, analyzed, i. 263-264 n.

— How the happiness of a people may be affected in the administration of, i. 270.

— Security the principal object of, i. 307-308.

— Protection of—Forfeiture of, as a punishment, i. 474-475, 513-514.

— Impossible to have, without mis-seated punishment, i. 476.

— Relation of procedure to the rest of the, ii. 15-22.

— Clause directing obedience to the, in the French Declaration of Rights, criticised, ii. 511.

— Clearness and rationality of. Dependence of jury trial on, ii. 125.

— Questions of, distinguished from questions of fact, ii. 155.

— Students of. Admission of, to hear legislative debates, ii. 326.

— Influence of fallacies of authority on, ii. 393.

— Application of the abstract term to designate lawyers, a fallacy, ii. 448.

— Extent of the liberty it ought to protect, ii. 505-506.

— Fallacy of the principle that it has no right to forbid anything but what is hurtful, ii. 506.

— Fallacy of the principle that no one can command or hinder, except in terms of, ii. 506-507. Children, apprentices, &c., adduced in illustration, ib.

— Fallacy of the principle that it is the expression of the general will, ii. 507.

— Fallacy of the principle that every citizen has the right of concurring in the formation of it, ii. 507-508.

— Fallacy of a fundamental declaration that it ought to be the same to all, ii. 508.

— Fallacy of a declaration to the effect that no one *can* be accused, arrested, &c., except in terms of, ii. 510-511.

— Fallacy of a declaration that it must be promulgated before punishment *can* take place in virtue of it, ii. 512-513.

— A—Meaning of the term, iii. 215.

— The reference to, as a fictitious person, characterized, iii. 223.

— The different ways in which the interests of different persons may be affected by a portion of, iii. 256-258. Persons benefited and persons charged, 256-257. Person benefited has sometimes to act—sometimes not, 257-258. Reason of inquiry—to find what branches of law should be brought prominently in view to particular individuals, for the sake of general brevity, 258.

— Cases where different parties are concerned in a portion of, with reference to each having the means of receiving his share, iii. 258-259.

Law—Proper ends of the distributive branch of the, iii. 293-294.

— Study of. Gradual promotion of judges as an inducement to, iv. 370-372.

— The service of the. How to make it honourable instead of odious, iv. 398-404.

— The—The proper means of inducing individuals to give aid in executing, considered, iv. 398-404.

— Whatever is useless in, is pernicious, iv. 426.

— Logical scheme of division of, and its connexion with the Political, iv. 491-492 n.

— dictum that every man has the means of knowing that by which he is bound, controverted, v. 235-237.

— Use of unintelligible language in, a device of the technical system, v. 448-449, 509.

— Declaration of, by judge to jury—a declaration of the judge's will, v. 481.

— Relation of, to happiness, vi. 7-8.

— Relation of judicial procedure to, vi. 7.

— taken to be the perfection of reason by non-lawyers, because lawyers say so, vi. 206.

— Ignorance of, kept up by those who punish for it, vi. 519.

— Irrationality of—Interest of lawyers in, vii. 206-207.

— Source of the disposition to pay obedience to, vii. 330.

— Evils necessarily attending the enforcement of, vii. 335.

— and Equity—Distinctions between, ii. 63, 74, 87; vii. 290-291, 511.

— and Equity—Irrationality of the distinctions between, vii. 300-305.

— and Equity—Quarrel and compromise between, with the results, ii. 87; vii. 303-305.

— unpromulgated—Tyranny of, vi. 519.

— not what it does, but conception of what it ought to do, that keeps society together, vii. 528.

— The uses of, vi. 509.

— Point of—postponement of evidence till it be settled, vii. 231.

— Definition of, and position in the Encyclopedical Sketch of Art and Science, viii. 94-95.

— Amendment of a—Meaning of the term, viii. 494.

— Criticism on, with the view of amendment, predicates censure of, viii. 494-495.

— General division of the aggregate body of the, ix. 8-9. Substantive, and adjective or procedure, 8. Private and public, ib. Benefits and burdens, ib. Distributive and penal, ib. Real or statute, and judge-made law, 8-9.

Law—civil or distributive. General objects of, ix. 11-18. *See* Security; Subsistence; Abundance; Equality.

— Distinct objects of, and relation between them, i. 302-303.

Law and Lawyers—Conversational remarks on, x. 581-582.

Law—Adjective. *See* Adjective Law.

Law—Constitutional. The province of, ix. 9-11. *See* Constitutional Law.

Law—Common. *See* Common Law.

Law of Denmark. *See* Denmark.

Law—Ecclesiastical. *See* Ecclesiastical Law.

Law—English. *See* English Law.

Law of Equity—*See* Equity.

Law of France. *See* France.

Law of Rome. *See* Roman Law.

Law of Scotland. *See* Scotland.

Law—Financial. *See* Financial Law.

Law—Judge-made. *See* Judge-made Law.

Law—Martial, with reference to the best method of dispersing mobs, i. 370-371.

Law—Procedure. *See* Procedure Law.

Law of nature—Use made of the term, vii. 83 n, 96.

Law—Jurisprudential and statute, contrasted, vii. 309-310.

Law—Unwritten—a fictitious entity, vi. 529 n.

Law—Penal—Evils of, illustrated in the exclusion of criminating evidence, vii. 348-349.

— *See* Penal Law.

Law—Wager of, vii. 70, 549-551.

Law Books—Character of those on evidence, vi. 204.

Law—Fictions of. *See* Fictions.

Laws—*Ex post facto* and unpromulgated—Injustice of, i. 84.

— Promulgation of, and of the reasons—Essay on, i. 157-163.

— Impossibility of the composition and the sanction of, being from the same hands, i. 160.

— Transplanting, i. 172-188. *See* Transplanting.

— whether those of the present time would have been the best for times past, or would be the best in future? i. 188-194.

— Mischievous uses made of the argument that they are good enough for the people or the times, i. 191.

— Bad—Mischievous practice of disputing the validity of, i. 231 n°.

— Blackstone on the reasons for, i. 234.

— Right and duty of the supreme power to make, i. 283-295. *See* Supreme Power.

— should be consistent in themselves, i. 323-324.

— The power of over expectation, i. 324-326.

— should follow the principle of utility, i. 324.

— Advantage of making known, i. 323.

— Advantages of method in, i. 324.

— Advantage of certainty in execution of, i. 324-325.

— Advantage of intelligibility in, i. 325-326.

Laws divided into substantive and adjective, ii. 5-6.

- Imbecility of, advantageous when they are guided by sinister interest, ii. 138-139.
- Self-acting, considered in connexion with the union of self-interest and duty, ii. 199-200 ; iv. 12.
- Impossibility of teaching, in their present state, ii. 258.
- Proposal and initiative of, in Legislative Assemblies, ii. 350-352.
- The drawing up of, ii. 354-358. How far regulation can go, 354-355. Brevity in the articles and paragraphs, 355. Simplicity of propositions, 355-356. Illustrations of complex propositions, ib. Pure declaration of will, 356-357. Bills should contain the whole terms of the law to be passed, 357-358.
- Conflicting interests of lawyers and the public in the state of the, ii. 395-396.
- Irrevocable—The fallacy of, ii. 401-408. See Irrevocable Laws.
- made for perpetuity, but should continue only on the ground of their rationality, ii. 407.
- Duration of. Variety of opinions and practice entertained as to, ii. 410 n.
- Obedience to, not dependent on the character of the administrators, ii. 423-424.
- Declarations, that those of a certain description cannot be passed by the legislature—Fallacy and mischief of, ii. 493-495.
- Method of inculcating observance of, in the French Declarations of Rights, criticised, ii. 527-528.
- Principles of obedience and opposition to, ii. 528.
- Eluding. Clause regarding, in the second French Declaration, criticised, ii. 528-529.
- Personal extent of the dominion of the, for the purposes of International Law, ii. 540-544. Definition of Dominion or Jurisdiction, 540. Subjects divided into ordinary and occasional, and corresponding division of sovereignty, 541-542. Criterion of standing sovereignty—Territorial right, ib. Criterion of subjection—birth within the jurisdiction, ib. Limitations of this principle—alien parentage, &c., 542-543. Circumstances influencing extent of jurisdiction in special cases, 543-544.
- Bad. Definition of, iii. 180.
- Fallacy as to the effects of, on liberty, iii. 185.
- The utility of making them easy of reference and comprehension, iii. 193.
- A complete written digest of the, urged, iii. 205-206.
- written and unwritten compared—evils of the latter, iii. 206.

Laws—Purity in the composition of, urged, iii. 206-207.

- Style of the, considered, iii. 207-209. Object—to have the idea in the mind at the right time, 207. Intelligibility, unequivocality, ib. Brevity, 207-208. Methods of Prolixity, with illustrations in the statutes, &c., 208. Secondary qualities—force, harmony, and nobleness, 208-209. Ordinary language to be as much as possible used, and technical defined, 209. Like words to like ideas, ib.
- The art of inditing, iii. 231-283. See Nomography.
- wherein their administration in a private family differs from that in a state, iii. 233-234.
- Notoriety to, the general end of their formalities, iii. 236-237.
- Ambiguity and obscurity as defects in, iii. 234-235.
- Uncognoscibility as a defect in, iii. 243-244. *Ab extra* from want of promulgation—*ab intra* from defective composition, ib.
- Overbulkiness as a defect in, iii. 246-247.
- Unsteadiness in respect of expression as a defect in, iii. 247.
- Unsteadiness in respect of import as a defect in, iii. 247.
- Redundancy as a defect in, iii. 247-248.
- Longwindedness as a defect in, iii. 248-249.
- Complexity productive of entanglement in, iii. 249-250.
- Importance of helps to intellection in, by means of abbreviated references, &c., iii. 250-251. Neglect shown in British statutes, ib.
- Unapt arrangement and disorderly collocation as defects in the composition of, iii. 252-253.
- Remedies for ambiguity in the composition of, iii. 253-255. Kinds incapable of remedy, 253. Remedies for miscollocation of limitative propositions, 253-255. If one clause only limited, the limitation to be within it—if a greater number, before all, ib.
- Remedies for relative overbulkiness in the composition of, iii. 255-256.
- Modes of notification of, to the parties interested, iii. 259.
- Necessity of keeping in view party favoured and party burdened in, iii. 259. Former, the justification of law—its communication to the latter its sanction for obedience, ib.
- Method of avoiding redundancy and obtaining steadiness and certainty in the composition of, iii. 260-264. Plea that redundancy necessary to certainty combated, 260. Appellatives to be adopted

- for classes of persons, 261. Appellative words to be printed in peculiar type, defined, and indexed, *ib.* Comprehension of objects under generic names, *ib.* Use of vulgar abbreviated appellatives where objects repeated, 261-262. Finding a term of continuous application for an establishment liable to change, 262. Ampliation and restriction of appellatives, *ib.* Rules as to the directive clause, 262-264. Command includes permission, 262. No permissive matter where an act already lawful, 263. Specimens of redundancy in a statute, *ib.* Causes, 263-264.
- Laws**—Making divisions and subdivisions in, *iii.* 265-266.
- Method of constructing designations for divisions and subdivisions in, *iii.* 266-267.
 - should never have *recommendations* in them, *iv.* 144.
 - French system of registering examined, *iv.* 311.
 - Cases in which judges should have a suspensive power in regard to, until the sense of the Legislature is taken, *iv.* 312-315.
 - Alertness of delinquency in taking advantage of defects in the, *iv.* 391.
 - Sleeping. Mischievous effects of, *iv.* 397-398. Slavery, despotism, and anarchy, 397. Put every man at the mercy of his neighbour, *ib.* Generally consist of such laws as the tyrants conceal out of fear, 398.
 - How seldom they have appealed to reason, *iv.* 400.
 - Absurdity of negating, by discouraging informers, *iv.* 400.
 - Unwritten and uncertain, have the effect of *ex post facto*, *iv.* 459-460.
 - Incomprehensibility of, places juries in the hands of judges, *v.* 74-75.
 - Dictum that no one too low to be without the protection of the, controverted, *v.* 233-234.
 - Dictum that they only impose restraints necessary for the common safety, controverted, *v.* 234-235.
 - Dictum that we are bound to obey none but what have received the virtual consent of the whole realm, controverted, *v.* 235.
 - Division of, into Enactive, Expositive, Instructional, Ratiocinative, and Exemplificational—in relation to the department of Real Property, *v.* 412.
 - of England—Impossible to obey them because impossible to discover, *v.* 546-547.
 - Necessity for their being recorded and published—neglect in this country, *vi.* 77-78.
 - Their origin generally to be traced to periods of barbarism, when they were made to suit particular interests, *vi.* 373.
- Laws**—Promulgation of, considered in the *Rationale of Evidence*, with the evils from the want of it, *vi.* 521-523.
- Instances of, too iniquitous to be taken advantage of, *vi.* 549.
 - Preappointed evidence as applied to, *vi.* 551-553.
 - Bad, should be altered, instead of being interrupted in their operation, *vii.* 442-443, 452-453, 457, 525.
 - Execution of the—vexation from, no good ground for exclusion of evidence, *vii.* 441-444.
 - Printed, should be on a par with written, as evidence, *vii.* 140.
 - Method of promulgation of, adapted to a partially civilized or Mahomedan state, *viii.* 573-577.
 - Impolicy of attempting to adjust production or consumption by, *ix.* 13-14.
 - Extent of the interest which a monarch can have in the just administration of, examined, *ix.* 137-138.
 - Duty of the Legislation Minister in regard to the operation of passing, amending, &c, *ix.* 430-437.
 - Method of giving the sanction of the Legislature to amendments of, proposed by judges, in the Constitutional Code, *ix.* 504-508.
 - Anomalous—Provision for suspension of the operation of, by judges, in the Constitutional Code, *ix.* 508-511. See *Judiciary Collectively*.
 - Circumstances in which individual discretion must supply the place of, *i.* 336-337.
 - Causes of prolixity in the composition of, *x.* 74.
 - Illustration of the manner in which the principles of, are popularly criticised, *x.* 75-76.
 - Promulgation of reasons for, and facts on which they are founded, *i.* 575-576.
 - of the University of Oxford—their moral influence, *ii.* 260-262.
 - See *Statutes*.
- Laws**—Body or Code of—General view of a complete, *iii.* 155-210;—
- — — General division of a, *iii.* 157.
 - — — Customary divisions of a, *iii.* 157-158. Internal law and law of nations, 157. Penal and civil, *ib.* Penal, civil, and political, *ib.* Civil and ecclesiastical, *ib.* Civil and military, *ib.* Written and unwritten or customary, *ib.* Natural, economical, and political, *ib.* Difficulty of classifying maritime, police, political economy, procedure, and criminal law, 157-158.
 - — — New divisions of a, *iii.* 158. Substantive and adjective, *ib.* Coercive or punishing, and attractive or remuneratory, *ib.* Direct and indirect, *ib.* General and

- particular, *ib.* Permanent and transitory, *ib.* Laws and formularies, *ib.*
- Laws—A Body or Code of—Relation to each other of offences, rights, obligations, and services, with relation to, *iii.* 158-160.**
- — — Reasons for dividing into Enactive, Expositive, Ratiocinative, and Instructional, *v.* 275.
 - — — Requisites of, according to the Codification Proposal addressed to all nations professing liberal opinions, *iv.* 537-564.
 - — — Necessity of all-comprehensive-ness to, *iv.* 537-538. Hated by party-leaders as to the constitutional branch—by lawyers as to the whole, 537. Vaguely looked on by their dupes as impossible, 537-538.
 - — — Necessity of its being accompanied by a Rationale, or indication of the reasons for each law, *iv.* 538-539. The several purposes served by the Rationale, *ib.* See Rationale.
 - — — Essential that the Rationale of, should indicate the conduciveness of the several laws to the universal happiness, *iv.* 539-543. Elements of happiness—pleasures, and exemption from pains, 540-541. Application of arithmetic to their estimate, 542. Vague generalities employed instead of greatest happiness, 542-543.
 - — — Essential that the various portions of the Rationale should be in juxtaposition with the articles of law to which they apply, *iv.* 543-545. Vagueness of the preliminary separate discourses attached to codes, *ib.*
 - — — Essential that competitors for drawing, should be as numerous as may be without expense, and plan for obtaining them, *iv.* 545-551. Invitation to all competitors to send outlines and samples, with inducement to them that, in proportion to the merits of their work, they will be held qualified for office, 546. A sample chosen as the best model, its author and others invited to send draughts, 547. Reasons—extent of chances of excellence, materials for amendment of draught adopted—School of Legislation, 547-548. Objections answered, 548. Reasons for not giving the members of the Legislature exclusively the duty—no time, and public competition will act as a bridle on them, 548-551.
 - — — Advantageous that no reward should be offered for the drawing of, *iv.* 551-554. Evils—Expense; number of apt competitors lessened, as reward creates patronage and interest; precipitate execution for a chance of the reward; public deprived of partial effects; school of legislation narrowed, *ib.*

- Laws—A Body or Code of—Advantageous that it should be the work of one hand, *iv.* 554-559.** The greater the number, the less the responsibility, the more the sinister interests to be served, and the more the defenders of deficiencies, 554-556. Consistency of parts with each other, particularly the Adjective and Subjective branches, 558-559.
- — — Advantageous that it should be known to be the production of only one hand, and that the author's name should be known, *iv.* 559-560.
 - — — Preferable that the draught of, should be by a foreigner than by a native, *iv.* 560-563. Absence of local prejudices and sinister interests, 560-561. Estimate of how far absence of local knowledge may be an obstacle, and superior general knowledge a facilitation, 561-562. Check on inapplicable draughts, in the power of the Legislature at home to reject them, 562-563.
 - — — The willingness to interweave a Rationale with, is the test of the draughtsman's aptitude, *iv.* 563-564.
 - — — The willingness to see established, with Rationale, &c., a test of a legislator's aptitude, *iv.* 564.
 - — — Properties desirable in, *iv.* 480. Notoriety, conciseness, clearness of language, compactness, completeness, usefulness, justifiedness, *ib.*
 - — — Notoriety as applied to, *iv.* 481-483. Separation of General Code from parts concerning peculiar individuals, 481. Separation of laws of occasional from those of constant concernment, *ib.*; and of laws of major from those of minor concernment, *ib.* Text and expository matter, 481-482. Nearest approach to making every man his own lawyer, 482-483.
 - — — Completeness as applied to, *iv.* 483-490. Common law a gap in the body, 483-484. Created by the judges, with assistance of reporters and publishers, 484-486. Illustrations of the elements of dubiety to be found in it, 486 n. Not amendable—attempts by forced constructions and taking distinctions, 487-488. Multiplicity of exceptions, *ib.* Inaccessibility arising from dubiety and consequent multitude of commentaries, 488. Gives judges the means of interpreting the law as they like, and corruptly applying it, 488-489. The Decisions, with their reasons, serviceable in some respects—guide to the Legislature in making real law, 490.
 - — — Justifiedness as applied to, *iv.* 491-494. Not sufficient that the laws be reasonable—must be shown to be so, 491-492. For the citizen at large, reasons fix details in the memory, and point to their true sense, 492. To the legislator, would

serve as guidance, restraint, and support, *ib.* The same to the judge, *ib.* Source of general security and tranquillity, 492-493. A school-book of morals, 493. Use to all public functionaries, *ib.* Use to electors in guiding their choice, *ib.* Ultimate reasons applied to the whole body of law constitute principles, 494.

Laws—A Body or Code of—Correspondence as to offer to draw up, for Russia, *iv.* 514-528.

— — — Two ways of preparing, distinguished—The close, where a party specially employed—The open, where competition encouraged, *iv.* 518-520.

— — — In the adoption of, open competition between draughts urged, *iv.* 520-521.

— — — The advantage of hearing public criticism on, before adoption, *iv.* 525.

— — — List of Positions in reference to the greatest-happiness principle, on which it should be founded, *viii.* 491.

— — — Argument for free inquiry into any proposed, and for receiving the assistance of foreigners to, *viii.* 493-505. ●

— — — Illustrations with reference to the proposed Spanish Code, of the propriety of having a general code applicable to all citizens, and having the laws which apply to individuals in peculiar positions (such as functionaries, &c.) separated into distinct codes, *viii.* 529-532.

— — — The requisites of, explained in remarks on the proposed code for Spain, *viii.* 516-535. See Spain.

— — — Project of a, contemplated by the author, *i.* *iii.*

— — — Proposal to draw up, for the use of the United States, *iv.* 453-467.

Law-agent—Vexation and inconvenience to, in the production of evidence, considered, *vi.* 93, 94, 95.

Law Officers—may profess ignorance of matters of fact, but never use untechnical expressions, *v.* 159.

— — — of the Crown—Double fees to, is charging the public with double the factitiously-increased professional remuneration, *v.* 160.

Law Taxes—Evils of, *i.* 319.

— — — Protest against, *ii.* 573-583. Falls on burden at the moment of distress, 573. A principle that no provision can be made against, 574. To those who cannot pay it is a denial of justice, *ib.* Equivalent to outlawry, *ib.* Situation of those who can pay them at commencement of suit, but are beggared by it, 575. Answer to the argument that they are borne by those benefited, 576. Answer to the argument that they discourage litigation, 576-577. Tend chiefly to the discouragement of the honest, 577. Trivial suits—

none can be said to be so to those who are willing to undergo the evils of pursuing them, 577-578. The poor who most likely to be oppressed, most subject to be checked, 578-579. Tax on pardons—repeal, 579 and *n.* Check to vexatious litigation in the method of awarding costs, 579. Breach of Magna Charta, 580. How submitted to, 580-581. Confounded with other less objectionable taxes, *ib.* Come by stealth on isolated parties, while other taxes press constantly on masses, 581. The wealthy have an interest in supporting, *ib.* Taking off the taxes, if it did not render justice accessible to all, would at least reduce its price, 581-582. Repeal, 582 *n.* Notes as to increase, &c., of these taxes, 582-583. Limitation to conveyancing would be a relief, 583.

Law Taxes—objectionable, on the ground that the public being benefited should pay, *ii.* 243.

— — — a license for injustice, to those who can pay, against those who cannot, *iii.* 239-280.

— — — considered, in remarks on the Bankruptcy Court Bill, *v.* 583-596.

Law Reform—Prejudices that impede, *i.* 230, 255.

— — — Lord Auckland's attempts at, *i.* 241-242.

— — — Fallacy of self-constituted authority—how opposed to, *ii.* 411-412.

— — — Delays of, accomplished by calls for consideration and reflection, *ii.* 434-435.

— — — Persons interested in, *iii.* 299.

— — — Slowness of the pace of, *iii.* 325.

— — — Principles of compensation to those affected by, *iii.* 325-326.

— — — Inimicalness of judges, though with seats in the Legislature, to, *iv.* 314.

— — — Difficulty of getting either legislators or constituents to see the importance of, *iv.* 498.

— — — Cromwell's attempt to accomplish, and the opposition he met with, *iv.* 501-502.

— — — Obstacles to, in the laudation of defects, and the use of vituperative and contemptuous language to reformers, *v.* 95-96.

— — — Lawyers unwilling—others unable for, *v.* 183.

— — — Petitions for, under the name of Justice and Codification Petitions, *v.* 438-548.

— — — Consideration of the interests that would be affected by, *v.* 505-506. As to Barristers, the number would cease to increase as the operation went on, 505. Attorneys would chiefly suffer, *ib.* Officials would be indemnified, 505-506.

— — — The sources of opposition to, *v.* 541-543. Interests of legislators as members of the public in favour of reform, but preponderant class-interests in favour of abuse, 541. The still stronger interest of

- the lawyers, who, instead of being the furtherers, are thus prompted to give the strongest opposition to reform, 542-543.
- Law Reform**—Paucity of the statutes enforcing, ii. 434-435; vii. 319.
- Statutes as to, an indication of the preëxisting evils of the jurisprudential system, vii. 319-320 n.
 - Suggestions of, to remedy the evils of the Technical system as exposed by the Author, vii. 320-329.
 - Technical language an impediment to, vii. 281.
 - Recapitulation of the impediments to, vii. 211-214.
 - Suggestion of heads under which imperfections requiring, may be ranked, in amendments, ix. 158-159.
 - Method for the accomplishment of, by judges, with the tacit sanction of the Legislature, in the Constitutional Code, ix. 504-508.
 - in Scotland—Resistance to, by Commissioners of Inquiry, v. 154.
 - in Scotland—Correspondence with Sir Samuel Romilly, &c., about, x. 421-425.
 - Correspondence with Brougham on a Commission of Inquiry as to, x. 574-576.
 - Brougham's projects of—Opinion on, x. 588-589.
 - Correspondence with O'Connell on, x. 594-597.
 - Letter to the Duke of Wellington on, xi. 9-12.
 - Suggestion of Itinerant Lecturers on, xi. 20-21.
 - Attempt to organize an Association for, xi. 30.
- Law**—Bishop, noticed, x. 290.
- Law**—Edward, Lord Ellenborough. *See* Ellenborough.
- Law**—Thomas—Correspondence of, with Bentham, x. 287-288, 288-289, 290-291.
- Lawrence**—Dr—Notice of, x. 285.
- Lawrence**—W. E.—Chargé d'affaires of the United States—Letter to, x. 541.
- noticed, x. 513; xi. 36.
- Lawrie's Form of Process** quoted, vii. 222-223, 307.
- Lawsuits.** *See* Suits.
- Lawyer and Non-lawyer**—Dialogues between, in the Rationale of Evidence—viz., on Masters in Chancery, vii. 218. On the mendacity-license, 266-267. On the Author's system of pleading, 271. On the English system, 279. On equity practice, 302 n. On the contempt shown by judges to the legislature, 312-315. On bringing officials into contempt, 334. On exclusion of self-criminative interrogation, 455-469. On motion for criminal information, 470. On the extraction of a defendant's evidence by bill in equity, 472.
- On the exclusion of husband and wife from giving testimony regarding each other, 482 n. On safeguards as substitutes for the exclusionary system, vii. 593-594.
- Lawyer**—French and English, and Non-lawyer—Dispute among, on law and equity, vii. 304-305.
- LAWYERS** sit contentedly under the abuses of their own system, but not under those of other systems, i. 184.
- Author's early feelings regarding, i. 268-269 n.
 - Business of, would be increased by an equal division of property, i. 360.
 - Sinister interest of, in the state of English procedure, ii. 13.
 - The system of consulting the interests of, about law reforms, characterized, ii. 13.
 - Employment of, and principles applicable to their exclusive privileges, ii. 50-51.
 - Compulsory recourse to, in England, ii. 73.
 - Expense and inconvenience occasioned by parties appearing through, ii. 113-114.
 - Necessity for employment of, a means of oppression by the rich, ii. 171.
 - Their sinister interest an illustration of operation of fallacies of authority, ii. 395-396.
 - Interest of, to oppose innovation, ii. 420.
 - Their employment of fallacies in procuring delay of reforms, ii. 434-435.
 - Interest of, in the incognoscibility of the law, ii. 457.
 - have an interest in the overbulkiness of the law, iii. 246.
 - Whether the principle of compensation can extend to, in case of law reforms, iii. 325-326, 373 n.
 - Interest of, in protracting suits, iii. 408.
 - Propensity of, to follow old beaten tracks, illustrated in the French National Assembly, iv. 311.
 - Monopoly of business to, and division into classes, attacked, iv. 318-319.
 - Trade of, created by the complexity occasioned by having different tribunals for different classes of cases, iv. 332.
 - rate the importance of causes by the amount of fees derivable, iv. 333.
 - Reasons why judges should not be chosen from among, iv. 371.
 - Apprenticeship unnecessary to the qualifications of, iv. 371.
 - Interests of, adverse to those of the public, iv. 495-498.
 - Their obstruction to Cromwell's Plan of Law Reform, iv. 501-502.
 - Injustice the great source of the profits of—the sinister interests it gives them, v. 6.

Lawyers—Their mistakes visited on their clients, v. 10.

- Their approval of proposed law reforms a ground of suspicion, v. 15.
- Their protection of bad systems by lavishing praise on them, v. 95.
- Illustration of their adjusting the phraseology of drafts of acts to suit their views, v. 136-138.
- Their propensity to found on and support abuses sanctioned by precedent, v. 142-143.
- Interest of, to keep up the confusion of the statute law in drawing new acts, v. 150 n.
- being the most able to reform the law and most unwilling—difficulty of getting it accomplished, v. 183.
- The interest of, in the arrangements of courts of justice, distinct from that of the suitors, v. 560.
- make no distinction between written evidence provided for a particular suit, and that provided without a view to it, vi. 70-71. (*See Preappointed.*)
- might be employed as temporary recorders, vi. 81.
- should be solely responsible for technical errors, vi. 84.
- Clients' communication to, should be evidence, vi. 99-100; vii. 473-479.
- Their interest in regard to exclusion of evidence, vi. 103-105.
- Their interest that a man should litigate, however bad his cause, vi. 139.
- Form in which they discuss the subject of evidence, vi. 143. Their division of it into written and unwritten, ib.
- acknowledge no interest but what is pecuniary, vi. 258; vii. 399, 415, 439.
- Mendacity-license of, vi. 298-300; vii. 262-270.
- the only persons in whom ignorance of law not punished, vi. 301.
- Least exposed of all men to the operation of humanity, vi. 311.
- Reasons why litigant should be allowed assistance of, vi. 337-338.
- Impossibility of getting them to be law reformers, vi. 545.
- The making deponents speak in the third person instead of the first, a device of, vi. 439.
- Respondent not allowed to answer bill in equity except through, vi. 440.
- The distinctions they have made in regard to evidence—A list of the presumed sources of, vi. 470-471.
- will admit compromise when fees exhausted, vi. 480.
- knowing the best method of extracting evidence, employ the worst, vi. 505.
- guilty of breach of faith in the law of nullity—an unknown exception to the

general rule, that the law will enforce the intention of parties to a contract, vi. 519-521.

Lawyers—Their holding a different code of morality from that of the public, vii. 188.

— Alliance between their sinister interest and that of judges, vii. 201-204. *See Interest—Sinister.*

— Their interest in the efficiency of criminal justice, vii. 207-209.

— become the dupes of their own system, vii. 210.

— The absurdity of confiding in their opinion of their own system, vii. 213-214.

— Scottish, do not conceal the vices of their system, vii. 224.

— Use of the principle of nullification to, vii. 258.

— The dividing of their consciences in the splitting of jurisdictions, vii. 303.

— General remarks on the manner in which they are subject to the influence of sinister interest, vii. 329-334.

— Opinion of, that cheap justice bad, and dear good, vii. 323.

— Knowledge of, confined to the corrupt part of human nature, vii. 393.

— view all interests as sinister, vii. 393.

— have neglected the efficacy of motives on human conduct, vii. 395.

— Pecuniary interest the only one they admit, vii. 399, 415, 439.

— Testimony of, should be excluded were mendacity a good ground of exclusion, vii. 415-420.

— Their methods of restoring the competency of witnesses, vii. 433-440. *See Restoratives.*

— Their interest in the escape of criminals, vii. 451.

— accessories to the crimes they defend, vii. 475.

— Their interest in the abundance of law-suits, and consequently of vice, vi. 266.

— Their interest in the exclusion of parties from the presence of the judge, vii. 232-233.

— Their interest in the distance of tribunals, vii. 235-236.

— Their interest in the bandying of causes from court to court, vii. 239.

— Their interest in the blind fixation of times for judicial procedure, vii. 240.

— Their interest in sittings at long intervals, vii. 244-245.

— Their interest in motion business, vii. 246.

— Their interest in mechanical judicature, vii. 248-249.

— Their interest in keeping litigants from coming in contact with each other, vii. 253.

— Their interest in the system of English pleadings generally, vii. 274-275.

Lawyers—Their interest in technical jargon, vii. 280-283.

— Their interest in fictions of law, vii. 286-287.

— Their interest in the diversifications as to execution, vii. 306.

— Their interest in needless and useless offices, vii. 307.

— Their interest in sham pecuniary checks to delay, vexation, and expense, vii. 307.

— Their interest in the double-fountain principle, vii. 309.

— described as one of the instruments of monarchy, ix. 135-136.

— considered as Judiciary assistants—what classes of, may be necessary—what are redundant, ix. 461-464.

— not eligible to the Bench by the Constitutional Code, ix. 528, 592-595.

— Charity of, in being always anxious to find good reasons for laws, x. 73-74.

— incidentally animadverted on, i. 163, 187, 238, 243-245, 466; ii. 11-12, 60, 73, 75-76, 102, 111-112, 122, 151, 152, 209, 373, 390, 391, 393, 394, 410, 430, 431, 448, 456, 465, 559; iii. 191, 241, 264, 301, 311, 319, 327, 332, 335, 370, 371, 373, 386, 391, 406, 407, 502; iv. 375-387, 459, 483, 537; v. 5, 74, 83, 84, 86, 93, 95, 98, 181, 182, 233-237, 275, 292, 391, 392, 400, 408, 409, 427, 476; vi. 23, 24, 84, 100, 144, 145, 149, 161, 180, 206, 223, 230, 273, 364, 403, 435, 438, 443, 464, 470, 475, 483, 492, 505, 506, 519, 529 n, 543, 544, 548 n, 551, 582; vii. 25, 61 n, 77 n, 189, 190, 191, 194, 195, 253, 267, 268, 269 n, 318, 319, 339, 340 n, 352, 364, 387, 408 n, 436, 440, 443, 498, 503 n, 504, 523, 538, 557 n, 598; viii. 468, 469, 470, 479, 501, 535, 539, 542; ix. 1, 194, 454, 472, 606; x. 74, 237, 374, 388, 568; xi. 10, 55, 56.

Lawyers—Professional. Provisions regarding, in Constitutional Code, ix. 589-597;—

— Who constitute, ix. 589. Person who assists another in litiscontestation, or frames written evidentiary instruments, ib. Parties should have one nomenclature—Demandant and Defendant, ib. Litiscontestation preferable to the term litigation, ib. The several classes—Attorneys, Advocates, Counsellors or Advisers, and Notaries, ib.

— Litiscontestational class of—one only, ix. 590-591. May act in partnership, but no separate charge, one for one sort of work, and another for another, 590. Evils of division—Removal of responsibility, encouragement to mendacity, increase of expense, inimicalness to improvement—all with increase of remuneration, ib. Manner in which, from the different media through which the pleadings pass to courts, the mendacity-license sanctioned,

ib. Impediments to mendacity in the simplicity of the code, 590-591.

Lawyers—Professional. Fields of service of, ix. 591. No allocation to particular courts, ib.

— Who locable as, ix. 591-592. Service as probationary, a preliminary to being put on the locable list, 591. Part spent in inspector's gallery—rest may be as gratuitous eleemosynary lawyer, 592. Ages—not locable to serve till 23 years old, ib.

— Capacity as to appointment to offices, ix. 592-595. While merely in training as Inspector, not disqualified for office, 592. But after he has commenced, disqualified as Judge or Registrar, ib. Not disqualified to be Government or Eleemosynary Advocate, ib. Reasons—the practice of taking a side, and of furthering injustice, 592-593. Is accustomed to be the higher reputed and employed the more he perverts, 593. Efforts to protect malefactors, ib. Impossible to bring the practitioner's feeling of interest to correspond with the universal interest, 594. Interest to create disputes, which judge's duty to allay, ib. Illustrations—Procurers and bravo, 594-595. Effects on the Bench in England, 595.

— Remuneration of, ix. 595-596. The less so spent the better, 595. Fixing the amount insufficient to keep it down, 595-596. Provisions in the code which will have a tendency to the reduction—Personal appearance of parties, printed forms of papers, exclusion of grades among lawyers, ib.

— Securities for appropriate aptitude on the part of, ix. 596-597. Responsible by punishment and compensation for statements mendaciously and temerarily false, 596. Subjection to power of Judge, by whom may be deprived, ib. Obligations to good conduct towards the adversary, as well as to client, 596-597. Prevention of accumulation of expenses for the purpose of recovering them from opponent, 597.

Laxity as a defect in language, viii. 308.

Lazarettos—Applicability of the Panopticon system to, iv. 37-248.

— Special application of the Panopticon plan to, iv. 119 n.

Laziness—Remedy against, in workhouses, by the earn-first principle, viii. 383.

Leach—Sir John, noticed, v. 562.

Lead—Summary convictions for the theft of, vii. 504-505.

Leader of mankind—Energy both of head and heart that must be in a, i. 191.

Leading Principles of the Constitutional Code, ii. 269-274.

Leading a witness, vi. 393. See Suggestive Interrogation.

Learner—The faculties necessary for the, distinguished from those necessary for the inventor and the teacher, viii. 75-76.

Learning or Intellectual Instruction—Advantages derivable from, in whatever shape obtained, viii. 8-10. Securing general respect, 8. Security against ennui, 8-9. Security against sensuality, 9-10. Security against idleness and mischievousness, 10. Admission into good company, ib.

— — — Particular advantages of the system of, proposed in Chrestomathia, viii. 11-16. Number and extent of branches of useful skill and knowledge, 11. Increased chance of lighting on the most appropriate pursuits, ib. General strength of mind derivable from these resources, ib. Application of this mental strength to the pupil's professional pursuits, 11-12. Habits of order, 12. Possession of sources of comfort and security, ib. Means of protecting health, ib. Security against the terrors, impositions, and self-delusions, to which ignorance is subject, 12-13. Securing the choice of good companions, ib. Relieving parents from the burden of personal superintendence, 13-14. Cheapness, 14. Preference to the more useful branches of instruction, 14-15. Corporal punishment superseded, 15-16. Superior position of the pupils in the general rank of education, 16. Enlargement to each pupil's field of occupation, ib.

— System of, proposed in Chrestomathia—Objections to, answered, viii. 16-21. That it is impracticable, 16-17. That it disregards classical learning, and other accomplishments, 17-18. That the conceptions entertained will be superficial and confused, 18-19. That conceit likely to be engendered, 19-21.

Learning—Classical—Value of and extent of attention that should be paid to, ii. 258-260.

— **Legal**—Interests which tend to increase the necessity for, vi. 207.

— **Useful**—The universities obstacles to, ii. 468.

Leases—Use of registration with regard to, vi. 575-576.

— of crown lands—Application of public competition to, v. 325-328.

Le Blanc—Mr Justice—Case of the *Independent Whig* for a libel against, cited, v. 112.

Le Brun—Case of, vi. 214; vii. 18.

Le Clerc noticed, vi. 213; vii. 7.

Lecturers—Itinerant, on Law Reform—Suggestion of, xi. 20-21.

Le Despenser—Lord—Notice of, x. 53.

Le Dieu—Operations of, as an agent of Louis Philippe, xi. 41-42.

Lee—Arthur, noticed, x. 94.

Lee—The orientalist, noticed, x. 150, 154.

Leeds—Duke of, noticed, x. 214, 246; xi. 100.

Leeds—Duke and Duchess of—Bentham's interviews with, when a school-boy, x. 31.

Left-hand Marriages—Practice of, in Germany, i. 545.

Legacy Duties—Incidence of, ii. 592.

Legal Language—Technical. Wherein it differs from other technical, iii. 269-270.

— — Importance to society of improvement in, iii. 270-272.

— — Prejudices adverse to improvement in, obviated, iii. 272-274. Created in a barbarous age—wisdom of our ancestors, 273-274. Purity of language, ib. Love of ease; prejudice against inventor; sinister interest, 274.

Legal maxims—Instances of, dictated by caprice instead of utility, i. 6-7 n *.

Legal obligation—Nature of, viii. 206.

Legal redress—Benefits of, as a succedaneum to revenge, i. 542.

Legal or Political sanction—Source and direction of the, i. 14; iii. 290-291.

— — — Its effect on testimony, vi. 260-261, 268-270. See Sanction.

Legal statistics. Extent to which they may be obtained, and uses they may be put to, vi. 561-564.

Legatees—Expedients for making them good witnesses for the will, vi. 158.

— Effects of their exclusion as witnesses, vi. 548-549.

Legerdmain defined, vii. 105-106.

Leghorn—visited by Bentham on his way to Russia, x. 150.

LEGISLATION—Introduction to the Principles of Morals and, i. 1 *et seq.*

— The art of, as distinguished from private Ethics, i. 142-148.

— Declaratory restrictions on, attacked, i. 154.

— Anticipative, animadverted on, i. 154.

— Influence of time and place in matters of, i. 171-194.

— Penal. Divided into direct and indirect, i. 533.

— Difficulty of the science, and paucity of persons capable of exercising it, ii. 249.

— Influence of fallacies of authority on questions of, illustrated in Lawyers and Churchmen, ii. 395-398.

— Suppression of ingenuity in, by fallacies as to precedent, ii. 410.

— Divisions of, with respect to forms of enactment, iii. 277-283. Principal and modificative, 277-278. Principal and effectuate, 278. Direct and indirect, ib. Indirect mandate with remuneratory inducement, 278-279. Prohibition with indirect punitive inducement to compliance, 279-283.

— Judicial—Plan for accomplishing, by regulations of Judges subject to disallowance of crown or either House, iii. 367-371.

Legislation incapable of providing minute rules for enforcing economy, iv. 132.

— Creating a school of, by inviting free criticism on legislative alterations, iv. 521-523.

— Creating a school of, by receiving drafts of codes by open competition, iv. 547-548.

— Authority of, usurped by King's Bench, vi. 414.

— often looked upon as a right, not a duty, vi. 207.

— Proper ends of, vi. 6.

— Positive—Cases in which exclusion of evidence justifiable, not a subject for, vii. 344-345.

— Rhetoric too often substituted for Logic in, viii. 508-509.

Legislation Minister—Functions of, by the Constitutional Code, ix. 428-437. List of functions, 428-429. Care of archives and edifices, 429. Persons to whose accommodation he has to attend—members, ministers, clerks, reporters, visitors, &c., ib. To report as to expiring laws, ib. Printing and distribution of laws, ib. Intimation to sub-legislatures, ib. To attend to the tactics of the assembly, ib. To attend to alterations, whether by simple abrogation, simple addition, substitution, or modification, 429-430. Reëditions of the general code, and of the special codes applicable to people in peculiar positions—latter the more frequent, 430. To take cognizance of amendments, for the purpose of rendering them uniform with the whole body of the law, 430-431. Provision as to cases declared urgent in which he cannot be consulted beforehand without preponderant mischief, 431. Nature of the minister's report as to symmetricalness, 431-432. What constitutes symmetrical form, 432. Course to be taken towards procuring alteration where not symmetrical, ib. Reasons why amendments should not be received unless they be symmetrical, 432-433. Admits assistance of ministers and of the public in legislation, and teaches habits of precision in thought and expression, 433. Reasons why these regulations do not interfere with the liberty of proposing any law, ib. Reasons for exception in the case of urgency, 433-434. Answer to the objections that the plan would cause delay, that one man's time insufficient, and that it creates monopoly, 434. A previous security in the circumstance, that whatever law may be proposed is prepared by an official, or by the Continuation committee, 434-435. The Legislation minister's office a school for teaching his art, 435. Method of receiving and dealing with amendments proposed by Judges, 435-436. Daily list of amendments in the Government newspaper, 436.

VOL. XI.

Publication of Periodical-amendment Calendar—heads of its contents, ib. Grounds for believing that these arrangements will suffice to keep the body of laws free of irregularities, &c., 436-437. Legislature to be kept clear of the judicial matter brought before it in England in the way of private bills, 437. The proposed system has in it all the good held out as an excuse for giving the monarch the initiative, without the evil, ib.

Legislational. Judicatories—held excepted from the rules applicable to the others, by the Constitutional Code, ix. 456-459.

Legislative Assemblies—Essay on the Tactics of, ii. 301-373.

— — Conditions requisite to giving the people confidence in, ii. 301.

— — Unanimity, majority, and quorum in, considered, ii. 306-307.

— — Permanence in, ii. 306-307.

— — Absence of members of, ii. 307.

— — Policy of dividing into two, ii. 307-310. Gives minority effect of majority, 307. Rivalry and corruption, ib. Distinct grounds in the different Houses, 307-308. Delays, 308. The initial kept by one—simple negative by the other, ib. The advantages of a division enumerated by Dumont, 308-310.

— — Publicity with regard to, ii. 310-317.

— — Publicity with regard to—Reasons for, ii. 310-312. To keep members to their duty, 310. Securing the confidence and assent of the people by open candour, 310-311. To let the wishes of the constituency be known, 311-312. Enabling electors to act from knowledge, 312. Deriving information from the public, ib. A rational amusement to the public, ib.

— — (Publicity,) Objections to, stated and answered, ii. 312-314. Incompetency of the public to judge, 312-313. Exposing legislators to popular hatred, 313. Legislators acting for popular applause, ib. Displeasure of the sovereign, 314.

— — (Publicity,) Objects to which it ought to extend, ii. 314-316.

— — (Publicity,) Exceptions to the rule of, ii. 315.

— — (Publicity,) Means of, ii. 315.

— — (Publicity,) State of, in England, ii. 315-317.

— — Place of meeting for, and arrangements connected with it, ii. 317-320.

— — Matters immediately concerning the members of, ii. 320-327. *See* Members.

— — Arrangement of hours of business for, ii. 322-323.

— — Attendance of members of, ii. 323-325.

— — Requisition of a quorum in, ii. 326.

— — Admission of visitors to, how to be regulated, ii. 326-327.

O *

- Legislative Assemblies — Presidents and vice-presidents of, ii. 327-330. Rules for their office, 327-328. Should be one principal, who should be permanent, *ib.* Rules as to his functions and competency and incompetency, 328-329. Should be judge and agent, 328. Should be subject to control, *ib.* Should not be a member, 328-329. Choice, 329. Object of all regulations the obtaining of the genuine will of the assembly, 329-330.
- Mode of proceeding in, in the formation of decisions, ii. 330-350.
 - Points to be attended to in the formation of acts of, and correspondent rules, ii. 335.
 - Unity of the subject of debate in, to be kept inviolate, ii. 341-342.
 - Process of debating in, to be kept distinct from and prior to that of voting, ii. 342-346.
 - Impropriety of a fixed order of preaudience in debating in, ii. 346-349.
 - Reason for taking votes simultaneously in, ii. 349-850.
 - Different acts entering into the formation of a decree in, ii. 352.
 - Motions, bills, and amendments in, ii. 352-354.
 - The drawing up of laws in, ii. 354-358.
 - Rules for debates in, ii. 358-364.
 - Should not act on hearsay evidence of circumstances, ii. 364.
 - Amendments in, ii. 365-366.
 - Motions of adjournment in, ii. 366-368.
 - Voting in, ii. 367-372.
 - Special committees in, ii. 372-373.
 - Committees of the whole House in, ii. 373.
 - Formulas for, ii. 373.
 - Means of preserving, from disturbance of members, iii. 591-592, 596-597.
 - Should be courts of judicature to the end of keeping order, iv. 355.
 - Evils of cessations in the sittings of, ii. 283-284.
 - Recordation with reference to the debates in, vi. 78-79.
- Legislative Power — Application usually made of the term, criticised, iii. 198.
- Legislator—Definition of a, iii. 223.
- How far he can lead public opinion, i. 464.
 - Qualities requisite for a, ii. 301.
 - Must work by the interests, affections, and passions, ii. 474.
 - Folly of the interference of, to limit the projects which individuals think safe, iii. 25-26.
 - Importance to, of a Rationale to the Code of Laws, iv. 492.
 - Should promulgate reasons for his laws, vi. 67.

Legislator—should provide that probative force of evidence may be as great as possible, vi. 221-224.

- His inability to draw a line distinguish-ing true and false witnesses, vi. 280.

- All fixed rules regarding evidence should spring from, vi. 184.

- Duties of, in regard to evidence, vi. 12-14, 210-212. Should give the judge power to give effect to, 210. Should give judge instructions for his guidance, and take securities that evidence be trustworthy, 211. Should provide against evidence being produced at preponderant inconvenience, 212. Should arm judge and parties with power for investigating, *ib.* Should provide records, *ib.*

- Instructions to be delivered from, to the judge, for estimating the probative force of evidence, vi. 151-175 ; vii. 563-598. *See* Instructions.

- What he should do in the case of make-shift evidence, vi. 59-60.

- Power of, to acquire knowledge as a foundation for his laws, vi. 152.

- Uses to, of inquiry into causes of trustworthiness of evidence, &c., vi. 247.

- Use of judicial registration to, vi. 330-331.

- Use of records to, as furnishing statistic facts, vi. 72, 76, 77, 511, 512, 555, 562, 564, 573.

Legislators — Representative — Advantages of impermanence of the situation of, urged, iii. 511-516. Short Parliaments supported both by utility and usage, *ib.*

- Proper endowments of, and means tending to their attainment, iii. 539-541.

- Constancy of attendance of, urged, iii. 495-511.

- Propensity of, to give commands rather than reasons, vi. 151.

- The question of their exclusion from reeligibility considered in the Tract on proposed Portuguese Constitution, vii. 483-485.

- Inaugural Declaration of, in the Constitutional Code, ix. 198-204. *See* Inaugural.

- Reeligibility of — Discussion with Dr Bowring on, x. 528-530.

Legislatorial Attorney—Charges of seditious for the election of, criticised, v. 241.

Legislature, The — Its superordination to the judicature—Plans by the French National Assembly for enforcing, criticised, iv. 310.

Legislature—Qualifications for members of a, considered, ii. 248-249.

- British—Blackstone on the powers, duties, and utility of the branches of, criticised, i. 277-282.

- — Blackstone's opinions on limitations of the powers of, criticised, i. 283-292.

Legislature—Fallacy in the opinion that the powers of, are limited, i. 288.

— Fallacy and mischief of attempts to bind, by declarations as to what it can and cannot do, ii. 493-495, 515.

— Acts of the—Essay on the drawing of, iii. 233-283.

— Designs of—how frustrated by operations of judges, iii. 281-283.

— Propriety of reference to, by judges, on laws of which the strict enforcement would produce injustice, iv. 312-315.

— Judges should not have seats in a, iv. 380-381.

— An upper chamber of—Address to the citizens of France against, iv. 419-450. *See* Peers.

— Members of. Reasons why they should not have the sole duty of preparing a new code of laws, and why it ought to be left to general competition, iv. 548-551.

— Contempt shown by English judges to the authority of, vii. 311-315.

— Members of—Difficulty in keeping the elements of corruption from, illustrated in the proposed Spanish Code, viii. 496-497.

— Connexion which the Prime Minister has with, by the Constitutional Code, ix. 206-207.

— Proper limits that should be preserved in the operations of, x. 510.

Legislature—Supreme—Exposition of the principles of, as introductory to the Constitutional Code, ix. 114-127;—

— — Single or divided, ix. 114-117. No second chamber—would only counteract the first, 114. A hereditarily aristocratic, would do so specially, 114-115. Always profitable to a monarch and themselves—detrimental to the body of the people, ib. Though elected, the defects of loss of time, and expense, ib. Illustration of how it might be the means of a minority outvoting a majority, 115. The one house being the active legislator's, the other not to be quite useless would seek employment in counteraction, ib. Complexity, and therein facility for corruption, 115-116. Lines of demarcation as to privileges, intercepting public business, 116. Various reasons why such a chamber inferior in aptitude to a first, 116-117.

— — Reasons why it is not in the supreme constitutive, or the people, ix. 117. Impracticability, ib.

— — Reasons why the election of, should be immediate, and not by the election of electors, ix. 117-118. Want of responsibility—exposure of elected electors to corruption, ib.

— — Duties peculiar and not peculiar to, ix. 118. Should not undertake the matters which are the subject of local and private acts in Britain, ib.

Legislature—Supreme — Dislocadility and punibility of the members of, ix. 118-119. Former insufficient of itself to counteract the temptation to corruption—latter must be added, ib.

— — The omnipotence of the, ix. 119-124. Limitations are founded on the presumption that at the time the constitutive and legislative have more aptitude than they can afterwards have, 119. Absurdity of the supposition, 119-120. No danger of tyrannous use—checks, 120. Uselessness and mischievousness of requiring a lapse of time before an alteration can take place, ib. Mischief of judicial invalidation, 121. Remedy for overstretch of authority in the refusal of obedience, ib. Declarations of limits self-absurd, as liable to be revoked by successors, 121-122. Use of restrictions on bad governments in weakening them—Bill of rights, &c., 122-123. The arguments about the division and balance of power overlook the greatest-happiness principle, which is found in giving power to the majority, 123. Necessity of having the judicial and executive open to remedy from the legislative, but no interference by them with legislative, 124.

— — Reasons for Inaugural declaration by members of, ix. 124-125. Means of letting their aptitude be known, 124. Check on conduct, 124-125. Saves the member from unreasonable solicitation, ib.

— — Reasons for sittings of, being uninterrupted, ix. 125-127. Performance of the public business, and avoidance of opportunities for corruption, 125. Objection answered, that men of worth will not submit to the restriction, 125-126. Objection answered, that the strictness without a precedent, 126. The objections brought by those who have a sinister interest in non-attendance, 126-127.

Legislature—Supreme—Provisions for the, in the Constitutional Code, ix. 160-198;—

— — Powers and duties of, ix. 160-161. For the time being, unlimited in power, 160. Authority over the executive, ib. Besides its own duties may, therefore, when it thinks right, assume those of the other functionaries, ib. The legislator to listen to individual constituents, but not to obey them, to the detriment of the general body, ib. Not to violate his duty by adopting the interest of the constituents at large, though it should seem contrary to the national interest: if a majority of constituencies are thus for it, it will become the national, ib. May give his opinion against, and his vote for his constituents, ib. Full powers to amend the code, ib.

— — Responsibility of, ix. 161-162. Judges not to refuse obedience to their acts, but

if they be unconstitutional, the constitution may exercise their punitive and dislocative authority, 161. The constitution to have the enforcement of observance of all contracts entered on by the legislative, 161-162.

Legislature—Supreme—Powers of, as to sub-legislatures, ix. 162. Directive, corrective, arbitrate, *ib.*

— — Election code of—List of the various heads of, and reference to Radical Reform Bill for substance of, ix. 162-163.

— — Attendance of, ix. 163. Constant, except Sunday, when only in case of urgency, *ib.*

— — Remuneration of, ix. 163.

— — Attendance and remuneration of, connected, ix. 163-166. Plan for member receiving his daily pay at the door, while a register kept of present and absent, 163. Reason why attendance should be exacted from these high functionaries, as well from those whose attendance is of inferior consequence, 164. Reasons of vacations, &c., in British Parliament—The monarch's wish to get rid of his checks, 164-165. America has blindly imitated these to much detriment, 165. A provision for necessary absence, sickness, and death, 165-166.

— — Sittings of, public and secret, ix. 166. The general sittings to be public, with as much room for attendance of visitors as possible, *ib.* Arrangements for a Registry of secret sittings—movers, cause, &c., *ib.*

— — Term of service of members of, and continuation, ix. 166-167. Briefest that convenient, 166. A regular recurring election without any official direction, 166-167. A year recommended, 167.

— — Self-suppletive function of members of, ix. 167-170. Power to appoint as substitute any eligible person who is not a member, 167. Responsible for substitute, *ib.* Provision for each naming a permanent substitute to be called on to attend when the principal out of the way, 167-168. Reasons for making such a provision—constant transaction of business, prevention of fluctuation, &c., *ib.* Reasons why the substitute not chosen by the electors—constancy of attendance, responsibility, avoidance of delay and expense, &c., 168-169. Correlative uses—educating a set of men as legislators, and bringing them into notice, 169. Considerations as to official dress, *ib.* Arrangements for letting constituencies know and judge of defalcations, *ib.*

— — Continuation committee of, ix. 170-172. To carry the measure of a preceding into a succeeding legislature, and so prevent good measures from falling, and supply deficiencies in aptitude, 170-171.

Saving time, and preservation of the knowledge that has been acquired, 171. No right of voting, and the reasons, 171-172. Reasons why they should be appointed by their colleagues, 172.

Legislature—Supreme—Who may be relocable as members of, ix. 172-180. Arrangements for making it so that no person can be reelected until there are three times as many who *have been* as *who are* members of the legislature, 172-173. Object—providing a set of qualified competitors, so that the electors may not look always to the same men, 173. No disappointment by the arrangement, *ib.* If it were not a fixed rule, deprivation would be invidious, 173-174. Will increase moral aptitude by removing the efficacy of, and the incitements to corruption, *ib.* Objection as to experience—advantages of, obtainable through the Continuation committee, 175-176. The non-relocability not to be perpetual, because it is good to give a choice among tried men, 176. The exclusion should not continue above two or three years; if too long the aptitude acquired is lost, &c., *ib.* Difficulty lessened by the other situations of public service open in the meantime, 176-177. Experience admitted to be of great value in the case of new-formed republics, especially when the people demoralized by the misrule from which they have broken, 177. Temporary non-relocability a medium course for such a case, 177-178. The Rump Parliament an illustration of the danger of relocability in such circumstances, 178. Impossibility of getting the same securities which are applicable to the executive officials directed against legislators, *ib.* The moral aptitude must depend on the Public-opinion Tribunal and the liberty of the press, *ib.* Answers to objections;—that the plan impedes freedom of choice, 179; that it is unmerited ill-treatment of the representative, *ib.*; that capable people would not accept of the temporary trust, *ib.* Tabular comparative view of this system with that of undiscontinued relocability, 179-180. The system adds the sanction of punishment for neglect of duty, to the more feeble arrangement of withholding the pay on non-attendance, 180.

— — Wrongful exclusion of members of, obviated, ix. 180-181. Majority of those present to decide, but a declaration to be entered if persons excluded would have turned the scale, *ib.*

— — Inquiry Judicature of, for collecting evidence as to proposed new laws or other proceedings, ix. 181-188. Cases when the Legislature must commit this duty to others, its own time being fully occupied,

181. Preappointed evidence, in Records, Statistics, &c., 181-182. Evidence that has to be elicited, 182. Personal and Real, *ib.* The powers to be given, those of the Courts of Law, and the additional ones which the Legislature has at command through its Agents, Envoys, &c., 182-183. Defect, in the evidence afforded by silence not being useful, as it is in judicature, 183. Exclusion on account of delay, vexation, and expense, not necessary as in judicature, *ib.* Qualities that evidence should possess, *ib.* Securities for the possession of these, *ib.* (*See* Evidence.) Choice of Legislation Evidence-elicitor, 183-184. May be a deputy or not, 184. If a deputy, the elicitation not to go on during the sittings, *ib.* Arrangements as to place, the persons present, &c., *ib.* Arrangements for secrecy where necessary, without danger of corruption, 185. The Report, *ib.* Its qualities—methodization, condensation, application, *ib.* The procedure in Committees of the Commons may be advantageously studied, 185-186. Favourably contrasted with the English judicial procedure, which sinister interest has perverted, 186-187. Defect in not possessing sanctions for truth, or means of enforcing answers to questions, 187. House of Lords—Inquiries capricious and useless, 187-188. Royal Commissions—sinisterly granted and for sinister purposes, 188. Suppression of interrogatories a bad feature in all, *ib.*
- Legislature—Supreme—Legislation Penal Judiciary for, *ix.* 188-190. For trial of members of existing or anterior Legislature, the Prime Minister, or the Justice Minister, 188. • Either all or none members of the Legislature, 189. Chosen by secret suffrage, *ib.* If the whole Legislature have time, may act, *ib.* Recommendations for impartiality, *ib.* Legislature not to act as an Appellate Judiciary, but to give redress where wrong purposely committed by Judges, 189-190.
- — Members' motions, *ix.* 190-191. Distinction between new laws and amendments of old—in latter case a system for indicating precisely what is amended, 190. The reëditive mode, 190-191. Every member entitled to move—seconding necessary, to prevent captious motions, 191. Recommendation to consult with the Minister of the department before a motion made, *ib.*
- — Securities for appropriate aptitude in members of, *ix.* 191-198. • Principles acted on—minimizing confidence, and maximizing control, 191. Rules founded on them, 192. Self-regard and sympathy existing in all human minds, but latter rooted in the former, 192. If there be exceptions, not to be counted on, *ib.* Rulers act as if the subject many had more than they have of the selfish disposition of aggrandizement—themselves none, 192-193. Goodness of a Government tested by willingness to submit to the securities, 194. In representative Democracies, all classes but the lawyers willing to do so, *ib.* An absolute Monarch has no objection, if it do not interfere with himself, 194-195. A pure Aristocracy opposes, 195. The various departments in a mixed Monarchy opposed to, save so far as compelled to give way to the Public-opinion Tribunal, 195-196. Securities for general aptitude—wide suffrage, general responsibility, shortness of service, non-relocability, publicity, &c., 197. Reference to precautions applicable to moral aptitude, *ib.* Reference to those applicable to intellectual and active aptitude, 197-198.
- Legislatures—Local. Advantages of, and uses they can be turned to, *iv.* 429-430 n.
- — Provisions for, in the Constitutional Code, *ix.* 640-643. *See* Sublegislatures.
- Legitimacy—Questions as to, ranked among complex suits, *ii.* 81.
- Uses of registration for the purpose of proving or disproving, *vi.* 572.
- False inference of, from husband's non-expatriation, *vi.* 53-54.
- Crimes that have been perpetrated in the name of, *viii.* 472.
- Legitimate influence of property—Nature of the, *iii.* 483.
- Leibnitz noticed, *viii.* 37, 174, 178.
- Leicester—*ex parte.* The case of, cited, *v.* 357.
- Leinster—Duke of—His situation of Master of the Rolls alluded to, *iii.* 441 n.
- — — An officer in the Irish Volunteers, *iii.* 614.
- Lemma—Instance of a, applied to exhaustive division, *viii.* 102.
- Lenders of Money—Causes of unpopularity of, *iii.* 17.
- Leonard's Reports noticed, *vii.* 458.
- Lese majesty—The offence of, an incident of the Monarchical system, *ix.* 39.
- Lessart—M.—The case of, noticed, *ii.* 364.
- Letter—as casually written evidence, *vii.* 119.
- by defendant—used against him without interrogation, *vii.* 166.
- Exclusion of, as evidence on writer's decease, *vii.* 167-168.
- considered as makeshift evidence, *vi.* 58.
- Interrogation by. *See* Epistolary Interrogation.
- Letter-post—Applicability of, to judicial

- intercourse—Use for conveying judicial writs, &c., ii. 55; iii. 378-379; ix. 637.
- Letter-post—Adaptation of the machinery of, to indicating habitations for election purposes, iii. 587 n.
- The advantages of establishing, in every country, viii. 583. Evils of making it a source of revenue, ib. Contributes to the efficiency of the judicial power, to education, and to the increase of commerce, ib.
- Under the administration of the Interior-communication Minister, by the Constitutional Code, ix. 441.
- Letters—Inviolability of. Sieyès' doctrines regarding, considered, ii. 532.
- Letters to Count Torano, on the proposed Penal Code, delivered in by the Legislation Committee of the Spanish Cortes*, viii. 487-554.
- Lettres de cachet animadverted on, i. 576; vi. 364 n.
- Levelling system—Incompatibility of the, i. 311-312.
- Essay on the, i. 358-364. Property and sources of livelihood that would be destroyed, 358-361. Impossibility of counteracting the circumstances which cause inequality, 361-363. A case to which the common argument, of the difficulty of stopping, really applies, 363. Perpetual divisions with the alteration in population, 363-364. Increase of idleness and dissipation, 364.
- Democratic representatives have no interest in the, iii. 471, 475.
- A general project of, impossible, and not seriously entertained, iii. 605-608.
- Leviticus—The Book of, cited on the subject of oaths, v. 219.
- Lewenhoeck noticed, i. 329.
- Liability—a word requiring special exposition when used in law, v. 413.
- Liancourt—Duke de—referred to on the Philadelphia Penitentiary, iv. 213, 216, 235, 237.
- Letter from, on the Prison Discipline of America, x. 308.
- Answer to letter from, x. 312-313.
- noticed, x. 247, 399, 402.
- Liancourt—M. de—Letter from, with an account of the death of the Duke de Rochefoucauld, x. 285-286.
- Liar—Infamy attaching to the character of a, vi. 264.
- Oaths give a certificate of veracity to, vi. 322.
- Libel—Character of the offence of, i. 369, 538.
- Elements of the art of packing juries in cases of, v. 61-186.
- Best proof of, according to the doctrines of judges, is the act of prosecution, as it shows the prosecutor's feelings to be hurt, v. 107-108.
- Libel—considered the more criminal the worse the conduct it attacks, v. 234.
- Libel Law—an instance in which the Legislature attempts to attach infamy to an act, in vain, i. 466.
- Effect of unanimity of juries on, ii. 121.
- considered in Letters to the Spanish people on the Liberty of the Press, ii. 275-297.
- A strict interpretation of, would involve nearly all literary works, iv. 392 n.
- Tendency of, to destroy liberty, v. 65-66. A Libel, any paper in which any one able to punish finds what he dislikes, 65. Means of reducing the government to a despotism, 66. Can only be radically cured by Parliament, ib. But may receive palliation from firmness of jurymen, ib.
- Work on, commenced, and postponed to Art of Packing Juries, v. 65-66, 105.
- Influence of judges—how employed in strengthening and enforcing, v. 97-101.
- Instruments of, for crushing the liberty of the press, and their method of use, illustrated from the dicta and proceedings in Cobbett's Trial, v. 105-114.
- The Star-chamber, or a judge without jury, a preferable judicature for, to a covertly-pensioned jury, v. 115-117.
- Its state in 1820, with reference to the case of the King against Edmonds, v. 240-251.
- Forced unanimity of jurors serviceable in defeating, v. 466.
- Account of, in Petition for justice, v. 481.
- Protection it gives to judicial delinquency, v. 540.
- Truth an aggravation by, vi. 269-270.
- carried to its full extent would depopulate a country, viii. 538.
- a creation of monarchy, does not exist in a representative democracy, ix. 38.
- Communication to Cobbett offering remarks on, x. 448-449.
- Correspondence as to the existence of, in the United States, x. 512-513.
- Safety of the people dependent on the weakness of, x. 518.
- Attempt of Lord Mansfield to extend the operation of, xi. 62-63.
- casually animadverted on, ii. 418; iii. 591 n ‡; vii. 216, 270.
- Liberal opinions—Codification Proposal addressed to all nations professing, iv. 535 *et seq.*
- Liberalists and rigorists—their disputes concerning evidence, vi. 145-148.
- Liberality at the expense of the public—a name for waste, ix. 267.

Liberated prisoners—Plan of providing for, in the army or navy, or by a subsidiary establishment to the Panopticon Penitentiary, iv. 165-171.

Liberty—Love of—Component elements of, i. 210.

— Caprices regarding the infringement of, by punishment, i. 411.

— Forfeiture of, as a punishment, i. 474.

— and Government—Difficulty of the task of adjusting the claims between, i. 286.

— cannot be supported but at the expense of a certain portion of itself, i. 301.

— never should be infringed without a reason based on utility, i. 301.

— False popular definition of, i. 301.

— not to be considered as a principal object of the law, but as a branch of security, i. 302.

— Distinction between slavery and, i. 344.

— Deception that has attended the use of the term, i. 564.

— and licentiousness of the press—a sham distinction used to deceive, ii. 451-452.

— Fallacy of Declarations of imprescriptible right of, ii. 502-503.

— The definition in the first French Declaration, that it consists in doing what is not hurtful to another, criticised, ii. 505.

— as one of the Rights of man—Clause as to, in the second French Declaration, criticised, ii. 524-526.

— of travelling—Sieyes' doctrine of, considered, ii. 532.

— Fallacies as to laws spoken of as hurtful to, iii. 185.

— Confusion of individual and political, with the evils occasioned by it, iii. 185.

— Attacks on, at commencement of 19th century, iii. 435.

— False use of the term, vii. 522.

— Fallacy that judicial forms are the shields of, exposed, viii. 478-482.

— a loose expression; "security" preferable, viii. 509-510.

— of discussion—A common interpretation of, is permission to say what the granter of the liberty approves of, viii. 495.

— Religious—Plan for uniting the Catholics and Dissenters for the furtherance of, x. 592-594.

— British. The seeds of, to be found in the forms of Parliamentary procedure, ii. 332.

Liberty and necessity—Opinion of the unprofitableness of inquiries into, x. 216.

Liberty of the Press—Preponderant advantages of, in comparison with censorship, i. 538.

— — — Efficacy of, in directing public opinion, i. 563.

— — — Principles on which it should be founded, i. 574-575.

Liberty of the Press—Effect of unanimity of juries on laws against, ii. 121.

— — — Special juries invented against, ii. 138.

— — — and Public discussion, considered in Letters to the Spanish people, ii. 275-297.

— — — Advertisement to Letters on, &c., ii. 276.

— — — The foundation of all other liberties, ii. 443.

— — — Criticism on the clause regarding, in the French Declaration of Rights, ii. 515-516.

— — — Sieyes' doctrines regarding, ii. 532.

— — — Chief use of the office of Attorney-general, to struggle with, iv. 405.

— — — Extent of the danger of, from Libel Law, v. 65.

— — — Influence of judges on juries, employed in crushing, v. 97-101. The existence of the liberty seemingly denied in judicial dicta, 97-98. Judges having so many of their own to protect, must assist others in protecting their abuses, 99-100. Free Press an object of hatred to incapable judges, 100-101.

— — — Instruments for crushing, and their employment, v. 105-114. Confusion of what demands disapprobation with what demands punishment, 105-106. Rules of the practice of Libel Law drawn from the case of Cobbett, 106. Rule of disesteem, which involves all who detect abuses, 106-107. Rule as to hurting the feelings—hence no better evidence of libel than a man being so far hurt that he is prompted to prosecute, 107-108. Discovering the unfitness of the occupants of high places, 108-109. Rule concerning dislike—certain qualities in a discourse creating dislike held libel, 109-112;—Viz., Want of fairness and liberality, 110; Flippancy and deviation from decency, ib.; Unbecomingness and flippancy, ib.; Improperity, slanderousness, ill-nature, ib.; Want of candour, ib.; Tendency to ridicule, 110-111; Contradictoriness—a quality exhibited by the supporters of legal fictions, 111; Discussing, unless it be with what a judge calls decency and candour, 112. Terror occasioned by the mysterious darkness in which the doctrines are hid, 112-114.

— — — restricted to the liberty of praise, v. 243.

— — — Laws making express provisions for, are always to be suspected—Illustration in the proposed Spanish Code, viii. 510-512.

— — — Remarks on, in relation to South America, in a letter to José Del Valle, xi. 18-19.

— — — Casual remarks on, ii. 418; iii. 470, 471, 562.

Liberum veto in Poland noticed, ii. 306.

Libraries—All large, would be destroyed by a general division of property, i. 358-359.
— Encouragement for the formation of, ii. 258.

Licence—The Mendacity, animadverted on, vi. 298, 302, 316. See Mendacity-licence.

Licenses—The substitution of, for commercial restrictions—a means of raising revenue, x. 304.

— for political societies considered, ii. 294-295.

Licentiousness of the press—Distinguished from its liberty, for fallacious purposes, ii. 452.

Lie. The term in its full meaning, applicable to fictions of law, v. 452.

Lies (Judicial)—Business made through, vii. 202-203. See Fictions.

— Multiplicity of, in ordinary life, vii. 407.

Life—Duration of, as a question of probability, vii. 87-88.

— Sacrifice of, in Penal colonies, and the transportation system, iv. 195-199.

— not to be twice put in jeopardy—remarks on the principle in criminal law, vii. 361.

Life Insurance—Application of the principle of, to surgeons for convicts, and others, having charge of their fellow-beings, iv. 196-197 n.

Lilly the Astrologer—an illustration of the superstition of his age, viii. 78.

Limbrey against Gurr—Case of, cited, v. 357.

Limitation—Title by, examined, i. 327.

— in English law—Analysis of the operation of, and criticism on the term, x. 509.

— put upon the number of witnesses—Exclusion of evidence occasioned by, vii. 531-537. Multiplicity an evil, in respect of complexity, &c., 531-532. Cases, however, in which number of witnesses essential, 532-533. Remedies—preliminary meeting, 533; in complicated cases, analysis, 534. Election cases, ib. Cases where an offence consists in the reference of distinct acts to each other, 534-535. Application of the hints to courts of natural procedure, 536. Division of causes for the purpose of decomposition, ib. Aberrations of established systems, French and Spanish, 536-537.

Limitations—Statute of, noticed, vii. 193 n.

Limitative Propositions—Proper collocation of, in composition of laws, iii. 253-254.

Lincoln—Lord—Case of, cited, vi. 145.

Lincoln's Inn—Advice from, to Sir Richard Phillips, in relation to his inquiries as to the packing of Special juries, with comment, v. 147-153.

Lind—John—Bentham's acquaintance with, x. 55.

— — Bentham's account of, for Barker's

Parriana, x. 55-65. Birth and parentage, 55. Intercourse with Bentham's family, 55-56. Services in Poland—appointed Privy-councillor to the king, 56. Reads to Prince Czartoriski, ib. Reception by Lord North and Lord Mansfield, ib. Work on Poland, ib. Review of the Acts of the thirteenth Parliament, 56-57. Connexion with Lord Mansfield, 57-58. Success, 58-59. His visitors—Baron Maseres, Wedderburn, &c., 59-60. Defends Lord Pigot, 60. His marriage, ib. His wife's history, 60-61. His intercourse with Nathaniel Forster, 61-62. His work on the colonies, and the assistance he received in it from Bentham, 62-64. His acquaintance with Governor Johnstone, 64-65. His style, 65.

Lind—John—Notice of, in preface to Fragment on Government, i. 247.

— — Defence of Fragment on Government by, i. 258-259.

— — casually noticed, iv. 259 n, 262 n, 268; x. 46, 48, 180.

Lind—Mrs—Pension to, by King Stanislaus, and Bentham's exertions to get it paid, x. 358-359.

Lindgren—Mr—Letter from Bentham to, x. 323.

Lindsay—Rev. Dr, noticed, x. 528.

Lineage, as a circumstance influencing sensibility, i. 30.

Linen—Rarity of leprosy attributed to the use of, iv. 22.

Linguet—Estimate of, x. 123.

— His Theory of Civil Law animadverted on by Dumont, i. 299.

— His Plaidoyers quoted, v. 200 n.; vi. 303; vii. 126.

Linnæus—Characterized as an observer and inventive methodizer, viii. 76.

— His logical division, of the aggregate facts as to botany supplied by the operation of synthesis, considered, viii. 125-126.

— His method a model for a system of Technology, viii. 149.

— The nomenclature and subdivisions of, examined, vii. 269-270.

— casually noticed, vi. 442; viii. 108 n.

Liquor—Intoxicating—Addiction to, as a main cause of crime and non-reformation in Penal colonies, iv. 230-235.

— — Use of, excluded in the Panopticon system, iv. 153.

— — Effects of, on society, i. 539-540.

— in prisons—Limitation or negation of supply of, iv. 21.

— — Taxes on—Nature and objects of, i. 535.

— — Moral influences of a tax on, iii. 78 n.

Listlessness—Intellectual instruction the surest resource against, viii. 8-9.

Literary Composition—Methodization as applied to, and the defects it is used to overcome, viii. 271-272.

Literature—Good effects of the cultivation of, i. 541.

— Rewards for—Effects of, ii. 212-213.

Lithographic Printing—its utility as a means of cheaply multiplying documents, and its special adaptation to partially civilized countries, viii. 575-576.

Litigants—Eleemosynary assistance to, ii. 9.

— Penalties on—Aggregation of, as a fund for poor litigants, ix. 491-492.

— Poor and helpless—Plan for the assistance of, in the Constitutional Code, ix. 489-493.

— Securing responsibility of, on making judicial application, ii. 42-43.

— Elicitation of name and address of, ii. 43.

— Means of intercourse with, how to be established, ii. 43-44.

— Reconciliation of, as a function of the judge, ii. 46-47.

— Circumstances in which they may appear by proxies, ii. 49-52.

— Means of securing communication with, for purposes of procedure, ii. 52-57.

— distant from each other—Procedure between, ii. 99-103.

— not being the only persons benefited by litigation, should not bear the whole cost, ii. 576.

— Dishonest—encouraged by law taxes, ii. 577.

— must always feel that to be important, which can induce them to commence a suit, ii. 577-578.

— producing documents, should declare credence in them, vi. 117-119.

— Frauds and falsehoods of, would be checked by personal presence in court, vii. 230-232.

— All statements by, should be subject to punishment in case of mendacity, vi. 297-303.

— Interests of, overlooked in framing rules of evidence, vi. 392.

— Preliminary meeting of, before the judge, vi. 136-137; vii. 373-374. *See* Preliminary Meeting.

— *See* Suitors: Plaintiff: Defendant.

Litigation—How far costs of, should be defrayed by the public, ii. 112.

— Vexatious—might be checked by a proper system in the awarding of costs, ii. 579.

— Appropriation of distant successions to the public would check, ii. 591.

— Danger of collusion the only reason why the cost of, should not be paid by the public, iv. 391 n ||.

— Saved by preappointed evidence, vi. 61.

— Want of merits falsely presumed from discontinuance of, vi. 49-50. *See* Suit.

Litigational Proxies—Principles of the employment of, ii. 50-51.

Litigational-disbursement-authorization mandate, ii. 112.

Litiscontestational applications and mandates, ii. 63-64.

Little Hunchback—Tale of, from the Arabian Nights, cited, vii. 11 n.

Littleton (Edward Lord) Chancellor, noticed, v. 378.

Livelihood—The possession of knowledge a means of securing, viii. 8.

Liverpool—Lord—noticed, ii. 119; v. 315, 344-345, 377, 410; x. 362.

Livingston—Edward—Proposal for printing his Penal Code for Louisiana by the House of Commons, xi. 37.

— Letters from, on the preparation of his Code for Louisiana, xi. 23, 51-53.

— Letter to, xi. 35-36.

— noticed, x. 556; xi. 42.

Lloyd—Charles—spoken of as the author of Junius, x. 564.

Loans. Impolicy of legal restrictions of interest on, iii. 1-29.

— The least objectionable encouragement which government can give to trade, iii. 58-59.

— Pitt's admission of free competition for, ii. 228 n †.

— National. Disadvantageous terms on which they must be negotiated, iii. 136.

— to foreign powers, one of the elements of monarchical profusion—never repaid, and given in circumstances in which it is known that they cannot be so, ix. 33.

— Government; The security on which they are actually advanced, is not merely the individual fund appropriated to them, but the whole revenue, x. 325.

— Effect on the national wealth of contracting and of paying, iii. 76, 80.

— War—Advantage of the project of Annuity notes, in regard to, iii. 131-132.

— Private—Inconveniences attending, as compared with the project of Annuity-notes, iii. 120.

Local courts or judicatories—Advantages of, iii. 329; vii. 371, 398.

— Evils of the want of, ii. 76.

— Considerations as to salaries of judges of, iii. 335-336.

— Considered injustice to the superior merit of Metropolitan lawyers, v. 45.

— History of the extinction of, in England, vii. 234-236.

— Deficiency of, in England—abundance under the Roman system, vi. 430 n.

Local Headmen—Provisions for, in the Constitutional Code, ix. 612-625. *See* Headman.

Local Legislatures—Advantages and uses of, iv. 429-430 n.

— Waste of the attendance of Parliament on the duties appropriate to, ix. 118.

- Local Legislatures—Provision for, in the Constitutional Code, ix. 640-643. *See* Sub-legislatures.
- Local Registrars—Provision for, in the Constitutional Code, ix. 625-636. *See* Registrars.
- Locative function—to whom applied in the Constitutional Code, ix. 155-156.
- How exercised in the Constitutional Code, ix. 156-157.
- Locke—characterized as an observer and discoverer, viii. 76.
- His influence in bringing about the Revolution, iv. 447.
 - Axiom of—that where there is no property there is no injustice, criticised, vii. 80-81.
 - Impression on Bentham from the perusal of his work on the Understanding, in boyhood, x. 22.
 - Opinion that he has prepared the way for a digest of the law, x. 70-71.
 - noticed or quoted, i. 293 n, 341, 538; ii. 312, 379, 381; iv. 142 n; v. 280; vii. 70, 95, 514; viii. 107 n, 110, 150, 282; x. 143, 531, 561, 588.
- Locomotion—Sieyes' doctrine of the liberty of, considered, ii. 532.
- Locations employed by Bentham in the field of thought and action—List and analysis of, x. 560-561.
- Logic. Essay on, viii. 213-279.
- Note on the Essay on, by Editor, explanatory of the author's method of treating the subject, and the state of the MSS., viii. 214.
 - Introduction to, viii. 217-219. Obligations to Aristotle as interpreted by Sanderson, 217-218. Appreciation of the Aristotelians, ib. Tactical sacrificed for the Dialectic department by them, ib. Necessary to call logic both an art and a science, 218-219.
 - Definition of—its amplitude justified, viii. 219-220. Art having for its object giving direction to the mind in its pursuit of any object, 219. Covers the whole field of art and science, ib. Wherein a treatise on, differs from an encyclopedia, ib. Covers the whole field of thought and action, 219-220.
 - Narrower and more common acceptations of, considered, viii. 220. Art of Disputation, Art of Arrangement, ib.
 - Relation of, to metaphysics, viii. 220-221. Metaphysics an off-shoot, ib.
 - General view of the characteristics of, viii. 221. Compared with the *Præcognita* of the Aristotelians, ib.
 - End in view or ultimate object of—well-being, viii. 221-222. Separation from the province of Ethics, which has the same object, ib. Logic only worthy of regard in as far as it is of use, ib.

- Logic—Field of exercise appertaining to, viii. 222-223. Use of the term "field" as preferable to others applied to the purpose, ib.
- Relation of the operations of, to the field of exercise, and the end in view, viii. 223-224.
 - Class 1. of Mental operations of, viii. 224. Where the subject regarded entirely and singly without reference to past time or to other subjects, ib. Perception, ib. Attention, ib.
 - Class 2. of Mental operations of, viii. 224-225. Remembrance, Retention, Revocation, Reminiscence, ib.
 - Class 3. of Mental operations of, viii. 225. Operations which suppose subjects more than one in the mind—Judgment, Decision, Determination, Comparison, Examination, ib.
 - Class 4. of Mental operations of, viii. 225-226. Operations implying choice or separation, 225. Abstraction, Imagination, Invention, 225-226.
 - Class 5. of Mental operations of, viii. 226-227. Operations presenting a number of entire objects, 226. Designation, Denomination, Methodization, 226-227.
 - Class 6. of Mental operations of, viii. 227-229. Operations involving communication of ideas, 227. Discourse and Expression, ib. The nature of language as a means of communication, and considerations as to the methods of communication, 227-229.
 - Faculties to which it gives direction and assistance, viii. 229-230. Passive and active, 229. Physically and Psychically passive, ib. Pathematically and Apathematically passive, 229-230. Originally and Derivatively active, 230.
 - The main instrument of—language, viii. 230-231.
 - Functions of, viii. 231. Learning, using, teaching, improving, ib.
 - Uses of—viz., all things that promote wellbeing, viii. 231-232.
 - *Præcognita* of, according to the Aristotelians, viii. 232-234.
 - The Aristotelian definition of, as embodied in Sanderson, criticised, viii. 232.
 - The utilitates, or uses of, according to the Aristotelians, criticised, viii. 232-233.
 - *Finis*, or end of, according to the Aristotelians, viii. 233-234. Improperly separated from uses, ib.
 - *Officia*, or Functions of, according to the Aristotelians, viii. 234.
 - Object, matter, and subjects of, according to the Aristotelians, viii. 234.
 - (The Aristotelian)—The predicaments of, examined, viii. 234-236.
 - (The Aristotelian)—Modes of discussion in connexion with, viii. 236-239.

Logic—(The Aristotelian)—Reasons why it has failed in discovering and in teaching useful truths, viii. 238-239. Words but arbitrary signs of things, ib.

-- Relation of, to the business of human life, and to Arts and Sciences, viii. 239-242. Confusion in distinguishing Arts and Sciences from the other business of life, 239-241. Relation to wellbeing the great bond of union, 241. Logic applied to the advancement of the other Arts and Sciences, 241-242.

-- The production of clearness of discourse, or Exposition, as a department of, viii. 242-253. *See* Exposition.

-- Division as a department of, viii. 253-259. *See* Division.

-- Arrangement or methodization as a department of, viii. 259-275. *See* Methodization.

-- Invention as a department of, viii. 275-279. *See* Invention.

-- New ideas derived by the Author from, iii. 286-292. Division of Entities into Real and Fictitious, 286. Division into Physical and Psychological, ib. Relation between *happiness and pleasure and pain*, ib. Dimension of value of pleasures and pains, 286-287. Extension of the word *matter* to Psychology, 287-288. Good and evil of the first and second orders, 287-290. Springs of action, 290. The sanctions, 290-293. Appropriate will and appropriate power, as conditions requisite for the accomplishment of objects, 293. Obligation and right as counterpart of each other, ib. Proper ends of the Distributive branch of the law, 293-294. Collative and Ablative events, 294. Divisions of offences, 294-295. Ends of Political economy, 295. Limitation of production by amount of capital and labour, 295.

-- Application of, to the means of giving expression to the dictates of the will, v. 270 n.

-- Relation of, to Nomography, or the art of inditing laws, iii. 234.

-- Analytical and Synthetic method in, falsely called the converse of each other, viii. 75 n.

-- The Schoolmistress of all the other Arts and Sciences, viii. 76.

-- Plasioscopic Noology substituted for the term, in the Encyclopedical Sketch of Art and Science, viii. 91.

-- Necessity for a new system of, comprehending a theory of language, viii. 120.

-- Its connexion with grammar, viii. 185.

-- Source of information on the traditive or informative branch of, in a system of Pauper management, viii. 427.

-- The essential importance of to legislation, neglected, viii. 508-509.

-- identified with Metaphysics, and defined, in the Common-place Book, x. 510.

Logic—Defence of, against the prejudices against, x. 586.

-- Parliamentary—Hamilton's, criticised, ii. 383-387.

Logical Analysis—History of, with illustrations, viii. 121-126. Physical analysis first step, 121-122. Thence individual logical analysis, 123-124. Aggregation by Synthesis, 124-125. Division of the logical wholes thus formed, 125-126.

Logical Aggregation and Division—Fictitious entities resulting from, viii. 206.

Logical Arrangements, or Instruments of Invention and Discovery, iii. 285-295.

-- List and analysis of those employed by Bentham in the various fields of his labours, x. 560-561.

-- Division. *See* Division.

Logical scheme of division of laws, and its connexion with the Political, iv. 491-492 n.

Logographical Principle—The, defined, ii. 320.

Logy and Logical—Use of, as terminations in Encyclopedical nomenclature, viii. 83 n.

Lolme—De, noticed, i. 282; viii. 467.

London—Common Council of, an illustration of annual election, iii. 512-513.

Long—Charles (Secretary to the Treasury)—Estimate of, x. 308.

-- Letters to, with Programme of Financial schemes, x. 303-304.

-- Notices of, iv. 202; x. 28, 307, 385, 391-394; xi. 112, 114, 119, 131, 134, 137, 139.

Long—Sir James—a visitor at Bowood, x. 92, 93, 97, 123.

Longitude—Effect of the reward for the discovery of the, ii. 227, 229.

Longman & Co.—their conduct in relation to the establishment of *The Westminster Review*, x. 540-541.

Longwindedness as a defect in the drawing of laws, iii. 240, 248-249. Illustrations in English statutes, ib.

Lonsdale—Lord (Sir James Lowther)—His requisition of implicit observance from his nominees in Parliament, x. 230.

-- noticed, iii. 483, 562.

Lords—House of—Argument for the establishment of a, resolves itself into the question whether an irremovable and irresponsible body is to be added to a removable and responsible, viii. 468.

-- -- Opposition of the interest of, to that of the subject many, viii. 468.

-- -- Reasonings against, in the exposition of the legislative system of the Constitutional Code, ix. 114-117. *See* Legislature.

-- -- The qualifications of the memoers of the, i. 279.

-- -- Blackstone's theory, attributing peculiar wisdom to the, controverted, i. 279-280.

-- -- Extent to which the members of,

have the advantage of experience, i. 280-281.

Lords—House of—Lord Auckland's Law Reforms thrown out in, i. 241-242.

— — — Application of the Jury-unanimity system to, ii. 136.

— — — Arrangement of members in, ii. 321.

— — — Proceedings improperly recorded in, ii. 335.

— — — Method of voting in, as a Court of justice, ii. 346.

— — — Motions not requiring to be seconded in, ii. 358.

— — — Judicial quorum of, an illustration of the feeble operation of duty in procuring attendance, iii. 504-505.

— — — Time of, occupied by private affairs of Peers, iv. 321.

— — — Evil of Judges having seats in, iv. 380-381.

— — — Arguments against the existence of a, addressed to the citizens of France, iv. 419-450.

— — — Questions never asked in, except for party purposes, vi. 181.

— — — Inadequacy of Parliamentary Reform, while it remains, ix. 144-145.

— — — Committees of Inquiry appointed by, capriciously, and not for useful purposes, ix. 188.

— — — Reasons for considering it a very unfit judicatory for rectifying errors, ix. 473.

— — — The proposed, for Spain—Tract on, viii. 468-470.

Lords Spiritual and Temporal contrasted and characterized, iv. 438.

Lords Spiritual. See Bishops.

Lords of the Articles in Scotland—Practice of, ii. 351 n.

Lords' Delegates—The proposal of a Judicature of, as a remedy for the evils exposed in the Art of Packing Juries, v. 184-186.

— — — Plan of a Judicatory under the name of the Court of, to act as Judges of Appeal, v. 55-60. Number and choice—one for each kingdom, and a general president, 55. Annual secret election, 55-56. Each to act in turn, 56. Members of the House to act as Lords visitant without vote, 56-57. Peers, not members of the House, also to have the privilege, ib. Decision the same as that of the House, 57. Place of sitting—habilitments—title, ib. Continuance and arrangements for unfinished causes, 57-58. Oath of office, 58. Time not to be taken up by acting as a member of the House, or otherwise, ib. Reasons for admitting Peers of Scotland and Ireland not members of the House, 58. The delegation though to commoners no innovation of privileges, 59. The tribunal being entirely judicial, the defect of want

of time would be obviated, 59. Present system not designedly but fortuitously created, 59-60.

Loss—Pain and fear of—nature of, i. 310.

— from non-fulfilment of obligations, &c.—Incidence and distribution of, i. 341, 342-343.

Losses—Considerations as to the unhappiness produced by, and the means of reducing the pressure, i. 306.

— What kind of, should be refunded by the state, i. 387.

Loss-books, as part of a system of Registration for official operations in the Constitutional Code, described, ix. 234.

— Uses of, and list of effective causes of loss, ix. 235-236, 246-251. See Books.

Lost deed—Production of copy of, gives opportunity for fraud, vii. 147.

Lot—Resort to decision by, iii. 390.

— as a means of settling the subjects of examination of qualifications, ix. 279-282. Enables the examiners, with economy of time and trouble, to test the average acquirements over a large range of subjects, ib. Method of putting it in force, ib.

— Application of, to decide the title to benefits too small for division among all claimants, ix. 282.

— Application of, to the location of burdens, ix. 282-283.

— Instances of jury coming to verdict by, vi. 226 n *.

Lotteries—Dr Price on, vi. 243.

Loughborough—Lord. See Wedderburn.

Louis XIV. His extravagant building operations, ix. 132.

— — noticed, iv. 416; ix. 399 n; xi. 58.

Louis XVI. The victim of the fallacy of the term "crimes of kings," ii. 450.

— — Anarchical fallacies that led to the death of, ii. 525.

— — Characteristics, and notice of, x. 93, 259.

Louis XVIII. noticed, v. 369, 484, 485.

Louis Philippe—Disinterestedness of, praised, iv. 431.

— — His views on the throne of France before the Revolution of 1830, xi. 19, 41-42.

— — noticed, xi. 57.

Love—Motives included in, i. 50 n.

— of reputation. See Reputation.

Low—Mr—His exposure of abuses as to fees in the Court of Chancery, v. 357-359.

Lower orders—Spread of anarchical principles among the, noticed, iii. 146.

Lowndes—Mr, of the Treasury—Estimate of, x. 51.

Lownes—Caleb, projector of the Philadelphia Penitentiary, quoted as to the nature of the institution, iv. 212, 213, 224, 235, 242-243.

Lowther—Sir James. *See* Lonsdale—Lord.
Loyalty—Bentham's early impression of, x. 42.

Lucas—M.—Experience against death-punishment quoted from, i. 531.

Lucian referred to, vii. 95; x. 80.

Lucretia—Story of, cited, vii. 55.

Luddites—An illustration of oaths giving facilities for combining for criminal purposes, v. 218.

Ludlow—His narrative of Cromwell's attempt to reform the law, and of Justice Coke's improved practice, iv. 501-502.

Lunacy—Nature of, vi. 251. *See* Insanity.

Lunardi—Account of the ascent of his balloon, in a letter to James Trail, x. 136-138.

Lunatics—Pauper. Advantage of statistical information as to the cost of custody of, viii. 362.

— *See* Insane.

Lunatic Asylums—Application of the Panopticon system to, iv. 60-61.

Lust, as a motive, i. 50, 55.

Lust, Lechery, Lewdness, Libidinousness, &c., as motives, i. 197.

Luther—Mention of, i. 485.

Luxury—Humanizing effects of, i. 541.

— The public advantages of, ii. 211.

— The wealth used in, as that which may be available in defence, iii. 37-38 and n.

Lycurgus noticed, i. 318, 467.

Lying—the basis of judicial procedure in England, vii. 417.

— Extent to which it is productive of falsity in evidence, vii. 74.

— How far addiction to, renders testimony untrustworthy, vii. 390.

Lying in Hospitals commended, i. 578.

Lyson—Thomas—a companion of Bentham in his boyhood, x. 14.

Lyssen's Italy—Opinion on, x. 572.

M

Macadam's roads referred to, ii. 218 n.

Macarthur—Mr, a settler in New South Wales—Notice of, x. 465.

Macclesfield (Thomas Parker—Earl of, Lord Chancellor)—his sale of Masterships in Chancery, iv. 375; v. 113.

MacCulloch—Dr, noticed, x. 567; xi. 82.

McCulloch—John, (the Political Economist,) noticed, ix. 293.

Macdaniel and Egan—Trial of, for conspiracy, vii. 387-388 n, 589-590 n.

Macdonald—Sir Archibald, Chief Baron—Letter from Sir Richard Philips to, on the Packing of Juries in the Exchequer Court, with the Chief Baron's answer, and a commentary, v. 121-136.

— Contempt shown by, for the authority of Parliament, v. 176-177.

— Notice of, x. 133.

Macdowal, (Andrew, Lord Bancton,) the institutionalist, quoted, vii. 396.

Machiavelli and Machiavelism noticed, ii. 383; v. 297, 299; vii. 598.

Machinery—Effects of, on the employment of capital in labour, iii. 39, 67-68.

Machines—New—Suggestions for the preservation of, from popular violence, iv. 109-110 n.

Mackintosh—Sir James—Letter from, to Granville Sharp, x. 428 n.

— Letter from Bentham to, x. 428-429.

— Letter from, on the Pamphlet called "Swear not at all," x. 476.

— Noticed, ii. 458; iv. 530; x. 281, 403, 408, 533.

Mackreth—The family of—Bentham's acquaintanceship with, and history of, x. 48-50.

McLane—Mr, noticed, xi. 36.

Macmillan's Forms of Process quoted, vi. 334 n.

Macpherson's papers noticed, vii. 528.

Mad-houses—The Panopticon plan adapted to the superintendence of, iv. 60-61.

— Application of the Panopticon system to, iv. 37-248.

— *See* Insane: Hospitals.

Madison—James—President of the United States—Letter to, on Codification, and answer, iv. 453-467.

— Second letter to, on Codification, obviating objections to the author preparing a code for the use of the United States, iv. 507-514.

— made citizen of France, x. 281.

— noticed, ix. 133; x. 498; xi. 40.

Madmen—why interdicted from contracting, i. 332. *See* Insane.

Madrid—Threatened prosecution of a newspaper editor in, ii. 277.

Magdalen asylums—Social effects of, i. 546.

Magdalen College—Illustration of University oaths at, v. 212 n.

Magistracy—The Westminster—Plan for remodelling, x. 336-338. Difficulty of uniting the two qualities of activity and honesty in a judge—fees producing the one, salary the other, 336-337. Proposal to have collegiate magistrates—one salaried, the other fee'd, 337-338. Advertisements—rendering the magistrates and constables accessible, and discoverable, 338.

Magistrates—Preventive duties of, i. 368.

— Advantage of popularity to, and of their being thought good whether they are so or not, iv. 359.

— Police, of the Metropolis—Observations on Peel's Bill for raising the salaries of, v. 328-348. The vague term "expedient" employed, 328-329. Inconsistency in referring to their existing aptitude, and

pleading the necessity of increase to secure aptitude, 329-331. Absurdity of limitation to barristers, 331-334. Competence of ordinary men of business—Patrick Colquhoun instanced, 334-336. Attendance, 336. The plan of rising from gratuitous deputeships to permanent stipendiary judgeships, as conducive both to zeal and ability, 337-339. Incorruptibility not the creature of salary, and not secured in higher seats, though there be no direct bribery, 339-344. Cheap and pure judges in France, 344. United States, 345. Substitute in the way of patronage in the appointment of county courts, *ib.* Extracts from the speech on the Bill, 346-348.

Magistrates—Police, of London—Illustrations of cheap judicial service, v. 606.

— Police, of the Thames—Heads of a Bill for regulating the, x. 331-333.

— See Justices of Peace.

Magna Charta—The protection of judicial formalities enforced by, i. 576.

— — Law Taxes a breach of, ii. 580.

— — Coke's opinion that an act contrary to, void, ii. 580.

— — Fees in Courts of Justice opposed to, iii. 328.

— — adduced against early efforts of the Crown to make grants of legislative privileges, iv. 259-260.

— — Violation of, in the Government of New South Wales, by unlawful detention of exiles, iv. 278-279.

— — Violation of, in the costliness of justice, v. 233, 287 n.

— — Insufficiency of the means adopted for giving effect to, shown by the numerous renewals, vii. 577 n.

— — though violated, useful, as the violation a palpable wrong, viii. 593.

Magnet—Reasonings upon the, vii. 85 n.

Magnetic source of motion—The limited extent of, viii. 137.

Magnetism as an illustration of the theory of credibility, vii. 97.

— defined and located in the Chrestomathic system of Instruction, viii. 32.

— How far connected both with Chemistry and Mechanics, viii. 30, 32.

— an illustration of the incidental origin of scientific nomenclature, viii. 70-71.

Mahomedan—Application of an oath in the case of a, considered, v. 202.

— Oath administered to a, vii. 423.

Mahomedans in British India—Application of Jury Trial to, ii. 137-138.

— — Extent of the sensibility of, with regard to religion, i. 174.

Mahomedan State—Securities against misrule adapted to a, viii. 555-600.

Mahomet—The achievements of, noticed, i. 177, 191.

Mahomet—His prohibition of wine noticed, i. 535.

— His barbarous reward for victory, ii. 197 n.

Mahon—O'Gorman. Observations on his motion on the coercion of Ireland, xi. 64-66.

Mails—Mr Palmer's improvement on the system of conveying, and his reward, noticed, i. 556.

Maintenance and Champerty. Oppressive nature of the laws against, iii. 19-20. Illustration, *ib.* Arose in a barbarous age, when pleas purchased to be pursued by force and influence, 19. In the present age leave a man to the oppression of wealth, 19-20.

Mainwaring—Mr—Mention of, xi. 137.

Maire—The, in France, as a species of Local Headman, ix. 613.

Majority—Fixation of time for commencement of, i. 125.

Maker of an article—Plan for preventing forgery of his mark, vi. 584-585.

Makeshift evidence analyzed, vi. 57-60.

Unoriginal including hearsay, 57. Extrajudicially written, 57-59. Modifications of unoriginal evidence, 59. Points of infirmity common to makeshift evidence, *ib.* Facienda by legislature in case of makeshift evidence, 59-60. English practice in regard to it, 60.

— — in general, vii. 118-121. Nature of deficiency in the securities, 118. Divided into extrajudicially written, and unoriginal, 118-119. Properties common to all kinds, 120-121. Topics to be touched on in relation to each, *ib.*

— — Precautions regarding, vii. 159-165;—

— — Impropriety of excluding any kind of, vii. 159-161. Though bad, held so likely to be believed by Judges and Jury that it must not be seen, in English practice, 159. Other inconsistencies in English practice, 159-161.

— — Arrangements for indicating the amount of danger in receiving, vii. 161-162.

— — Arrangements for diminishing the amount of danger from the admission of, vii. 162-164. Oath of credence or sincerity, 162. Eventual reinstatement in case of misdecision, 163. Liberty of appeal, and liberty of reference, 163-164.

— — Importance of admitting, in the character of indicative evidence, vii. 164-165.

— — Aberrations of English law in regard to, vii. 165-173. Introductory observations, 165-166. 1st, Using memorandum by defendant against him without interrogation, 166; 2d, Exclusion of such document after writer's decease, 167-168; 3d, Receiving memorandum on ground of unforthcomingness, without inquiry as to

cause, 168-169. Transcripts, 169-170. Adscititious evidence, 170-173.

Makeshift evidence considered with reference to safeguards from deception, vi. 164-166.

— — — unnoticed by Gilbert in his Law of Evidence, vi. 183.

— — — See Extrajudicially written; Hearsay; Media; Memoriter; Minuted; Real-reported; Transcriptitious.

Mala fides—a term from Roman Law, vi. 248.

Malaria—Authority for protection from the effects of, in the Health Minister, by the Constitutional Code, ix. 444-445.

Male—Trial of, quoted, vii. 75 n.

Malefactors—How oaths give facility to the enterprises of, v. 205-206.

— A class of, encouraged by Judge-made law, vi. 109.

— Official—Screening, to prevent attacks on the Government. Fallacy of, ii. 421-429. See Official Malefactors.

— See Criminal.

Malevolence—The pleasures of, i. 18.

— The pains of, i. 20.

— Motive corresponding to the pleasures of, i. 53-54.

— Inference of disposition from an act in pursuance of, i. 64.

Malgalhaes—Senhor—a Portuguese Deputy, noticed, x. 525.

Malice—Inference of, from homicide, and of murder from malice, vi. 54-57.

— Meaning of, in English law, vi. 304.

Maliciousness, Malignity, &c., as designative of motives, i. 203.

Malone—Edmund—His controversy with George Chalmers, as to Ireland's forgeries, criticised, vii. 193.

Malta—Historical notice of duelling in, i. 543.

Malthus—Coincidence of his Principle of Population with that of Bentham, noticed by Dumont, iii. 73 n.

Malversation—Official; use of official evidence for checking, vi. 555.

Man—French Declarations of the Rights of, examined, ii. 491-529. See Declaration.

Management—Board unfavourably compared with single, especially contract, in regard to efficacy, responsibility, and economy, iv. 125-134; v. 17-18. See Board.

— Trust and contract, compared, ii. 249-251.

Manchester Massacre—The, noticed, and characterized, ii. 276; ix. 140; x. 532.

— — — George IVth's approval of, ii. 470 n.

— — — The Cadiz massacre of 1820 a counterpart of, viii. 474-482.

Mandamus—Procedure on, vii. 498 n.

— in King's Bench, vii. 293.

— Return to a, vi. 462.

Mandatory—Conducting litigation by a, ii. 35-36.

Mandate—Procuracion, in the Constitutional Code, ix. 253-254.

— issued in continuance of a suit, ii. 89-90.

Mandates—Judicial, for bringing parties into court, ii. 63-64.

Mandative decree—when granted, ii. 91.

Mandeville—Barnard, noticed, i. 49 n +; vii. 89; x. 73; xi. 97.

Manifold system of writing described, v. 406 n.

— — — Specimen of, sent to the King of Bavaria, x. 578-581.

— — — proposed to the Real Property Commissioners, and illustrations of its utility in the utility of other plans of multiplying accurate copies, v. 432-435.

— — — Use of, by the Prime Minister, laid down in the Constitutional Code, ix. 209.

— — — Remarks on the utility of, vi. 85 n*.

— — — Machines for, described, vi. 576 n; vii. 140.

Manners—Good. How far a code of, capable of being enforced in official departments, ix. 307-309.

Mansfield—Lord—The Fragment on Government attributed to, i. 240; x. 82.

— — — Bentham's early admiration of, x. 45-46.

— — — A Defence of—Bentham's first published work, x. 67.

— — — Estimate of, and comparison with Camden, x. 119-121.

— — — His enlargement of the law of conspiracy animadverted on, v. 248-249.

— — — Attempt of, to take Libel cases out of the hands of juries, xi. 62-63.

— — — His definition of the Liberty of the Press, v. 97.

— — — His law in the Grenada case adduced to show that the crown cannot legislate for colonies, iv. 266-269.

— — — Indications from his expression as to moulding statutes, v. 542.

— — — Notices of, in connexion with John Lind, x. 57-58.

— — — His conflict with Lord Camden on the rigorous or equitable interpretation of the law, vi. 145-148, 534.

— — — on the legislative power of judges, vii. 311.

— — — Charge against, of altering the record in Wilkes' case, vii. 260 and n.

— — — on rules of evidence, vii. 341.

— — — Notices of, i. 246-248; ii. 209-210 n; iv. 259 n; v. 20, 89 n, 90 n, 113, 141-142 n, 352, 558, 586 n; vi. 184, 492; vii. 331, 353 n, 439 n; ix. 391, 473, 607; x. 56, 62, 65, 95, 183.

Mansfield—Sir John, Chief Justice of the Common Pleas, noticed, v. 357, 359 n.

Man-splitting—The system of, among political writers, x. 143.

MAN

- Manual of Political Economy**, iii. 31-84.
- Manufactory**—Plan for a, in connexion with the Panopticon Penitentiary, for the employment of liberated convicts, iv. 165-171.
- Manufactories**—Application of the Panopticon system to, iv. 37-248.
- Special means of making Panopticon system suitable to superintendence of, iv. 60.
 - solve the problem of procuring the longest possible period of attendance at work, v. 336.
 - Sanatory authority as to, in the Health Minister, by the Constitutional Code, ix. 445.
- Manufactures**—Tendency of, to create equality, i. 313.
- Amount of, limited by that of capital, ii. 549.
 - Relation of, to agriculture, ii. 549.
 - Laws against usury prejudicial to projects in, iii. 20-29.
 - Prohibitions and restrictions on rival branches of, iii. 63-64. *See* Prohibitions.
 - Taxes on rival branches of, iii. 65.
 - The carrying on of for the home trade, more advantageous than for exportation, iii. 69.
 - Decree of Spanish Cortes of 1820, prohibiting importation of, criticised, iii. 88-100.
 - Free choice among, for occupation of convicts, iv. 49-51.
 - Forgery of maker's mark on—Plan for prevention of, vi. 584-585.
 - Source of experimental information as to, in a system of Pauper management, viii. 426.
 - and arts—Technology of, as a branch of the Chrestomathic system of Instruction, viii. 38-39.
- Manuscripts**—Authority of. *See* Writing; Written Evidence.
- Many**—The, are not the enemies of the few, but the few are of the many, ix. 143-144.
- Map**—Encyclopedical, by D'Alembert—its imperfections, viii. 73-82.
- Maps** exhibiting division of the country into Election districts—Provision for, iii. 579-582.
- Arrangements for constructing, for the use of a Registry of Real property, so as to obviate the incongruities arising from inequalities in the Earth's surface, v. 428-429.
- Margarot**—Maurice, notice of, x. 466.
- Maria Theresa**. Results of her publication of the methods of inflicting punishment, i. 414.
- Marine Defensive Force**—Provision for, in the Constitutional Code, ix. 402-415. *See* Defensive Force.
- Marines as a military department**—The use and efficiency of, ix. 399.
- Suggestions for increasing the proportional number of, ix. 406-407.

MAR

- Mariners**—Plan for protecting, from oppression, by a system of Registration and Summary adjudication, ix. 409-415. *See* Defensive Force—Shipboard oppression obviated.
- Marital condition**—Offences that may be committed against the, i. 129-131.
- — *See* Husband and Wife.
- Maritime Code**—Plan of the, iii. 201.
- Marks** to attest quantity or quality—Uses of, i. 556.
- Identification—on the body—Utility of, for various purposes, x. 414-415.
 - Corporeal punishment by, i. 418-419.
- Market**—The. Effect of free competition on, ii. 228.
- Trade not dependent on extent of, but on amount of capital, iii. 54; iv. 411.
- Markham**—Dr, Master of Westminster School, and afterwards Archbishop of York—Notices of, x. 26, 27.
- — Latin ode addressed to, by Bentham when a schoolboy, x. 30.
 - — Mention of, xi. 112.
- Marlborough**—Duke of, noticed, vii. 528.
- Marmontel's Novels**—Part of, translated by Bentham, x. 85.
- Marriage**—Nature of, i. 129-130.
- Principles of the Civil Code regarding, i. 349-358. Seven questions, 349. Between what persons to be permitted, 349-352. Necessity of barriers, 350. Relations, ib. Table of Prohibitions, ib. Considerations as to Wife's Sister and Brother's Widow, 350-351. Historical Instances, 351-352. Duration—Divorce, 352-355. Marriage for life the most suitable, 352. Evils of indissolubility, 353. Principles that should regulate, 354-355. Conditions of the contract of marriage, 355-356. Proper age, 356. How far Parents, &c., may interfere in choice, 356-357. How many parties—Polygamy, 357. Formalities, 357-358.
 - Offences which may be committed against the conditions created by, i. 129-131.
 - Considerations regarding suitable regulations for, i. 544.
 - No inducements for, necessary in Legislation, iii. 73-74. Labourers not averse, and celibacy of consumers an advantage, ib.
 - Law of, should be embodied in a distinct code for those who may have occasion to use it, viii. 533-534.
 - Fund for—Service of Frugality Banks in making Provision for, viii. 409-410.
 - Condition of a pursuer as to, to be entered in Demand Paper, ii. 66-70.
 - Gretna Green, not allowed to be proved in evidence of bigamy in England, vii. 431.
 - Incapacities to the contract of, vi. 527 n.

- Marriage**—Contract of—Use of the promulgation paper to, vi. 65 n. t.
- Formalities of Contract of, vi. 528.
- Draught for a Deed of Settlement for, v. 400-402.
- Marriages and their dissolutions**, as subjects of registration, iii. 83; vi. 63 n, 567, 570-574. *See* Genealogical facts.
- Advantages of a state of society in which they may be early without being imprudent, and plan for creating such a state among the working population, viii. 437-438.
- Table of, to be exhibited by Local Headman in Constitutional Code, ix. 624.
- Plan for a Register of, in the Constitutional Code, ix. 629-630.
- Marryat**—Mr, cited on the method of striking Special Jurors, v. 158 n.
- Marsden**—Mr, Under-secretary—Action against Cobbett for libelling, adduced, v. 106-114.
- Marshal**—The. Office of, in the Polish diet, and in Sweden and Russia, ii. 327-328 n.
- Martial**—Courts, necessary tribunals of exception, iv. 334.
- Natural procedure in, vii. 321-323.
- Structure of, and procedure before, ix. 419-422.
- Provision for, in Constitutional Code, ix. 392-395. *See* Defensive Force.
- Martial Law**—a plant reared in the Penal colonies, iv. 211.
- Illegal proclamation of, in Penal colonies, iv. 279.
- Proclamation of succedaneum for, in Constitutional Code, ix. 390-392.
- with reference to the dispersal of mobs, &c., i. 370-371.
- Martin**—"Target"—Reason of the sobriquet of, xi. 14.
- Martin**—Richard, of Galway, noticed, v. 339, 343.
- Martin**—the engraver, and his Portrait of Lord Mansfield—Notices of, x. 46, 65, 66.
- Martinico**—Declaration by, of separation from France, iv. 409.
- Martyrs**—Dangerous effect of making, through the use of disproportioned punishments, viii. 549.
- Martyrdom**—Religious—Nature of the spirit of, i. 52.
- Marvellous**—The—Tendency of remoteness in time and place to make it believed, vii. 89-90.
- Mary I. of England**—Reign of, characterized, ii. 444.
- Reign of—Principles of Roman Law appearing in, v. 532.
- Massachusetts**—Adoption of the Penitentiary system in, iv. 213.
- Massares**—Baron—commended, x. 59, 183.
- Master**—Offences which may be committed against, with relation to his servant, i. 122-123.
- Master**—Responsibility of, for servant, in relation to satisfaction for offences, i. 383-385.
- Master and Servant**—Rights and obligations attached to the conditions of, i. 343.
- Effect of the relationship of, in influencing evidence, vi. 160; vii. 575-576.
- Master's time-saving principle**—in the management of the Chrestomathic school, viii. 47.
- Masters and Workmen**—System for facilitating the communication between, and anticipated effects in favour of both parties and the public, viii. 398-400.
- Masters in Chancery**—Secrecy of procedure before, iii. 398 n; vi. 376, 468.
- Auxiliary Judges to perform the functions of, in proposed Dispatch Court, iii. 397.
- The term "swindling" applied to their fees for fictitious attendances, v. 364-367.
- Origin and functions of, vi. 423.
- Abuses in the office of, regarding fees, ii. 209; v. 349-350; vii. 217-220. *See* Chancery.
- Neglect and non-attendance of, iii. 401-402.
- Brief outline of a reform in the practice of, v. 365.
- Sale of the offices of, public pillage, iv. 375.
- Masters in King's Bench**—Their influence in creating the Special Jury system, v. 76-77 n, 137-138.
- Examination before, vi. 493.
- Master of the Rolls**—Origin and jurisdiction of, vi. 423.
- Master of the Rolls' Court**—On the proposed absorption of, in the Chancery, v. 553-563.
- Matchless Constitution**—Use of the term, as a vague generality, ii. 442-445. Its fallacy examined, ib. Constitution not designed, but the produce of accidents in barbarous times, ib.
- Materia Medica**—Etymology of, and place in the Chrestomathic system of Instruction, viii. 36.
- Material things**—How the language applicable to, is used to express immaterial ideas, viii. 327-329.
- Materialists**—Account of the opinions of the, viii. 84.
- Mathematics**—Etymology of, and place in the Chrestomathic system of Education, viii. 36.
- Position of, under the term Posology, in an Encyclopedical Sketch of Art and Science, viii. 85.
- Questions in, are questions of evidence, vi. 208.

- Mathematics**—being useful to only a limited number of persons, should be a deferred branch of education, viii. 14.
- an illustration of unapt nomenclature, viii. 69-70. Intended to designate quantity, with or without relation to form or figure, 69. Means really, what is learnt or is capable of being learnt, *ib.* From the obscurity of its source, not so mischievous as other inaptitudes, 69-70.
 - Manner in which the new system of instruction might be applied to, in rendering the principles and purposes of it more fully comprehensible, viii. 155-185.
 - The principle maintained, that it is not true where not useful, or where it has not some physical representative, viii. 162-164.
 - Need of a revision of the whole field of, for the purposes of Chrestomathic Instruction, viii. 177-184. Impediments in the reverence for great names, 177. In Algebra the apparent mysticism as to negative quantities, 178. Explanation in an edition of Euler, *ib.* Fluxions, 178-179. Incomprehensibility to beginners of square root and cube root—proposal, by explanation and diagram, for rendering more distinct, 179-180. *Power* still more likely to be misunderstood, from the manner in which it is employed in other departments of knowledge, 180-181. The impediments in the way of adopting new and more analogous nomenclature into science would not impede its use for explanation, 181. Inadequacy of the existing terms for extended operations, *ib.* Arises from the interconversion of the Algebraic and Geometrical forms, 181-182. The unapt phraseology kept up by the experienced because it is familiar to them, while it is an impediment to learners, 182. The Pride of science, and the desire of the reputation of knowing the arcana of science impede elucidation, 183-184.
 - The mental use of, x. 518.
 - Memoranda on, xi. 73.
- Mathematical improbability** distinguished from ordinary, vi. 243-244.
- reasoning on evidence, adduced as an illustration of the inapplicability of fixed rules, vii. 158.
- Mathematicians**—Language of, with reference to the expression of degrees of persuasion, vi. 224.
- Matheson, Mr**—Educational system of—its nature, x. 506.
- Mathetic Exercises**, or those tending to instruction,—etymology of the term, and application in the Chrestomathic system of Instruction, viii. 44.
- Matlock**—Visit to, by Bentham in his youth, x. 46.
- Matrimonial condition**—Variations in the notion of, in different nations, i. 177.
- Forfeiture of, as a punishment, i. 470-471.
- Matter** considered as an absolute fictitious entity of the first order, and distinguished from substance, viii. 201.
- Use made of the extension of the word to Psychology, iii. 287-288.
 - Laws affecting, vii. 84-85.
- Matthew**—Gospel of, cited on the subject of oaths, v. 219.
- Maturity**—Plan for a Record of arrivals at, in the Constitutional Code, ix. 630.
- Maupertuis** noticed, x. 122, 531.
- Maurepas** noticed, x. 93.
- Mavracodato**—Prince Alexander, of Greece
- Correspondence with, as to the form of Government for liberated Greece, iv. 580-582.
- Maxims**. The multitude of, adopted and followed without foundation in reason, iii. 3.
- Meadley, Mr**—Sketch by, of various proposals for a constitutional Reform, iii. 553-557.
- Means**—Indirect, of preventing crimes, i. 533-580.
- justifying the end. Fallacy of the principle of, ii. 469-470.
 - of commission, as evidence of delinquency, vii. 55-56.
 - (of livelihood,) how those of an individual to be estimated, ii. 110.
- Meanness, Sycophantism, &c.**, as designative of motives, i. 200.
- Measure**. Utility of establishing standards of, i. 555.
- of punishment, i. 399-402. *See Punishment.*
- Measures**—False. Guarding the people against, i. 553.
- Endeavour to draw attention from, to men—a fallacy in debate, ii. 414.
 - Fear of what is at the bottom of, a fallacy, ii. 421.
 - only “one at a time,” a fallacy by which reforms are delayed, ii. 433-434.
 - How to postpone, from session to session, ii. 435.
 - Artful diversion from, by reference to others—A device for delay, ii. 435.
 - Defective—Rejection instead of amendment, a fallacy, ii. 471-474.
- Measures (of quantity, &c.)**—Provisions as to, a branch of the Civil Code, iii. 177.
- Measures, not men**. The expression a fallacy, ii. 470-471.
- Measurement of Pleasure and Pain**, i. 15-17. •
- Mechanical employments**—Advantage of introducing a system of Technology in regard to, with a Rationale of explanations, viii. 148-150.
- Mechanical judicature**, or decision on tech-

- nical grounds and without thought, considered, vii. 246-249.
- Mechanical Judicature** substituted for mental—a grievance charged in the Petition for justice, v. 472-473, 524-525.
- Mechanical Powers**—Question considered whether any common denomination can be found applicable to the qualities of all the various sorts of, viii. 146-147. Suggestion that it is not to be found in the nature of the powers, but in the uses, ib.
- Mechanical Philosophy**—Branches of, to be taught in the Chrestomathic School, viii. 30-31.
- Substitution of the term *Coenoscopic Physiurgics* for, in the Encyclopedical Sketch of Art and Science, viii. 87.
- Professorships of, in central towns, considered, ii. 257.
- Mechanical Pneumatics**—defined and located in the Chrestomathic system of Education, viii. 31.
- Mechanical source of motion**—The simply, referred to the gravitating influence of the moon, viii. 132.
- Mechanics** (in the limited sense of the word)—Definition and divisions of, and place in the Chrestomathic plan of Instruction, viii. 30.
- Bearing of the science of, on the ordinary concerns of life, viii. 24.
- Application to, of economy in the employment of sources of motion, viii. 143-144.
- Media**—Trustworthiness of evidence reduced by its passing through, vii. 131.
- Evidence transmitted through an indefinite number of, vii. 154-159. Calculation of number of media, 154. *Decrease of probative force with each medium, 155. Such evidence should only be admitted under conditions, 156. Does not increase danger of fraud, ib. Ancient facts, an illustration in practice, 157.
- Medical Profession**—Authority of the Health Minister in regard to, by the Constitutional Code, ix. 445.
- Medical science**—Necessity of keeping the end in view in inquiries as to, illustrated in the old preparations, containing many useless elements, viii. 277.
- Position it should hold as a branch of education, viii. 14-15.
- Medicine**—Study of. How far an acquaintance with the dead languages essential to, viii. 17.
- The liability to false conclusions in, attributed to the impediments to the discovery of all the operative causes, viii. 209.
- The word does not convey a meaning adequate to refer to all branches of knowledge relative to the preservation of health, viii. 35.
- Medicine**—Appointment of a professor of, in central towns, considered, ii. 257.
- National field for the experimental study of, in a system of Pauper management, viii. 425.
- A tax on, characterized, ii. 575-576 n.
- Tax on, compared with tax on justice, vii. 377-378.
- Sidmouth's Taxation of, characterized, ii. 582.
- Meditatio fugæ** warrants in Scotland, vi. 334 n.
- Meeting**—Preliminary, of parties to a litigation, to discuss authenticity of documents, &c., vii. 184-185, 187, 189, 193, 274, 279, 533.
- Recommended as a succedaneum to exclusion of evidence, vii. 373-374.
- To decide on a method of intercourse, notices, &c., vii. 250.
- Meetings**—Multitudinousness of—False inferences of sedition from, v. 242.
- Public. Tactics of, regulated by those of the legislature when it is open, ii. 311.
- Public. Tactic as to motions in, ii. 354 n.
- Public. Reasons for liberty to, ii. 289.
- Seditious. Act against, criticised, ii. 295.
- Melamorphic Posology**—proposed to be substituted to Geometry as a nomenclature, viii. 287.
- Meliorability**—a property desirable in a language, viii. 191.
- Melioration**—suggestive function of the Public-opinion Tribunal, ix. 158.
- of Ministers, by the Constitutional Code, ix. 264-265.
- Melodiousness or harmoniousness** as a property desirable in language, viii. 191, 305-306, 311.
- Melody**—in what respects distinct from harmony, viii. 305-306 n.
- Melville**—Lord. *See* Dundas—Henry.
- Members of Legislative Assemblies**—Utility of a distinctive dress for, ii. 320-321.
- — — — — Mischiefs from their non-attendance, ii. 323-324. Prevarication, negligence, admission of incapables, inaction, surprises, diminution of moral influence, ib.
- — — — — Means of ensuring attendance of, ii. 324-325.
- — — — — Debates of, should be finished before voting, ii. 342-346.
- — — — — There should be no fixed order of preaudience among, in debating, ii. 346-349.
- — — — — Votes of, should be taken simultaneously, ii. 349-350.
- — — — — Promulgation and registration of motions, bills, amendments, &c., of, ii. 352-354.
- — — — — should not be entitled to withdraw motions, bills, &c., ii. 354.

Members of Legislative Assemblies—Proceedings of, in the preparation of laws, ii. 354-358.

- — — Rules as to debating for, ii. 358-364.
- — — should not name each other, or impute motives in debate, ii. 363.
- — — How amendments to be proposed by, ii. 365-366.
- — — Dilatory or adjournment motions by, ii. 366-367.
- — — Voting of, ii. 367-372.
- — — Publicity serviceable to, ii. 313.

Members of Parliament—Inutility of having two for one electoral division, iii. 519 n.

- — — Constancy of attendance of, urged, ii. 325; iii. 495-511. General effects—deterioration of moral and intellectual aptitude—attendance on the corrupt side, iii. 495-496. State of attendance in practice—Plan for giving a complete view of the state of the House, 496-497. Mischief to moral aptitude by non-attendance, 497. Mischief to intellectual aptitude—ignorance of forms and business, 497-500. Mischief by giving superior efficacy to corruption—strong interest of Ministerialists to attend, 500-502. Examination of the interests that affect attendance, 503-505. The non-attendance contrasted with the diligence required of other public officers, 505-506. Individuals not blameable, 506-507. Incurability of the disorder—fallacy of expecting duty to be followed against interest, 507-508. House more truly abdicated than James II. did, 508-509. Precedents and censures from Hatsell, 509-511.

- — — Constancy of attendance of—a reform opposed by Whigs as well as Tories, iii. 531-532.

- — — Endowments or elements of aptitude on the part of, as elements of reform, and the means of attaining them, iii. 539-541.

- — — Means conducive to aptitude in, iii. 541-546. Placemen not to be eligible, 541-542. King's Ministers, &c., to have seat and motion included, without vote, 542. Annual elections, 542-543. Authentic publication of speeches, 543-544. Punctual attendance, 544-546.

- — — Who eligible as, by author's Radical Reform Bill, iii. 566-567, 567-568 n.
- — — Method of recommending, by Radical Reform Bill, iii. 574-575.

- — — Their continuance in their seats—Provision for, in Radical Reform Bill, iii. 588-589.

- — — Vacancies in the case of—How created and supplied, iii. 589-591.

- — — Practice as to vacation of seats by, criticised, iii. 589-590 n.

- — — How to secure the House against disturbance by, iii. 591-592, 596-597.

Members of Parliament—Nominee: the position of, x. 235-237.

- — — See Legislature; Parliament; Representatives.

Memento—Future-communication-securing, in procedure, ii. 57.

Memorandum—as makeshift evidence, vi. 58.

- Question whether a witness should be allowed to consult, vi. 386-392. See Notes.

- excluded as evidence after the writer's decease, vii. 167-168.

- by defendant—used against him without examination, vii. 166.

- See Casually-written Evidence.

Memorandum-making as a branch of the Chrestomathic system of Instruction, viii. 40.

Memoriter evidence, or supposed written evidence transmitted through oral, vii. 137-138.

Memoriter-metre principle in the management of the Chrestomathic School, viii. 53.

Memory—a faculty of the mind necessary to the teacher and the learner, viii. 76.

- The pleasures of, i. 18.

- The pains of, i. 20.

- Unproductive use that may be made of in education, when the intellect not exercised, viii. 44-45.

- False allocation of subjects under the head of, in the Encyclopedical Table of D'Alembert, viii. 77.

- Application of methodization to the assistance of the, viii. 272.

- Helps to, how far compatible with prevention of invention on the part of witnesses, vi. 446-451.

- Services of, to evidence, vi. 18.

- Suggestive questions for assisting, vi. 394.

- Failure of, an intellectual cause of incorrectness, vi. 251.

- Failure of, assuming the aspect of error, vi. 252.

- how refreshed, vi. 253.

- Written evidence transmitted through, vii. 137-138.

Men—That all, are free. Absurdity of the proposition, ii. 498.

- That they are born and remain equal in rights—Absurdity of the proposition, ii. 498-499.

- Endeavour to draw attention from measures to—a fallacy in debate, ii. 414.

- and Measures. Alternative elevation of one above the other—a fallacy in political discussion, ii. 470-471.

Menagement, as circumstantial evidence of delinquency, vii. 21.

- Infirmative circumstances applicable to, as circumstantial evidence, vii. 23-24.

Mendacious invention on the part of witnesses—How far helps to recollection

consistent with prevention of, vi. 446-451.

Mendacity—Definition of, vi. 222, 249.

- How its criminality arises from the purpose for which it is employed, v. 220-221.
- Fraudulent. Should be punished in all cases, whether accompanied by oath or not, v. 460.
- in Courts of Justice—Licensed, rewarded, compelled, and practised by Judge—a grievance charged in the abridged Petition for justice, v. 510-513. Bill in Equity, 510-511. Fictions, 511-513.
- Oaths necessitated for the establishment of, an item of complaint in the Petition for justice, v. 454-467.
- Nature of the interest that will occasion, vi. 159.
- Any motive may serve as a cause of, vi. 259-260.
- Effect of punishment for, in producing truth, vi. 268.
- Knowledge of circumjacent facts necessary to the support of, vi. 288.
- The various crimes which consist in, vi. 292 n.
- Murder accomplished by, vi. 304, 382 n^o.
- encouraged by Judge recommending plea of not guilty to criminals, vi. 306.
- checked by publicity, vi. 355.
- Disposition towards, on the part of a witness, a subject of investigation, vi. 403.
- Exercise of, allowed by law to criminals, on principle of self-defence, vi. 472.
- Confessional. Question if it is a circumstance to be anticipated, vii. 34-35.
- involved in the precision required in English pleading, vii. 276-277.*
- as displayed in Equity practice, vii. 299-300.
- Existence of, depends on the proportion between the mendacity-promoting, and the mendacity-restraining motives, vii. 395.
- The evil of perjury consists in, vii. 406-407 n.
- Conviction of, not a good ground for rejecting a witness, vii. 406-409.
- Exclusion of evidence on the ground of, would exclude lawyers and judges, vii. 415-420.
- Character for—Weight that should be given to, as affecting testimony, vii. 587-589.
- When evidence as to character for, on the part of a witness, should be received, ii. 61-62.
- License for, in the practice of giving judgment by default, vi. 23.
- Mendacity-License**—The, described and defined, ii. 48-49.
- — Persons by whom it is employed, ii. 58.
- — considered as a device of technical procedure, v. 11.

Mendacity-License—created by oaths, v. 197-200. Punishing falsehood only when on oath gave license to it in other shapes, ib.

- Extent to which it is carried in France, v. 200 n.
- — Complained of in Petition for justice as a device of the Technical system, v. 451-452.
- — considered in the Rationale of Evidence, vi. 298-302; vii. 263-270, 415-420;—
- — Nature of, examined, vii. 262-264. Exemption from punishment, 262-263. Statement not called evidence but allegation, 263. Gives efficacy to allegations even when they are known to be false, 263-264.
- — In what cases granted, vii. 264-268. Sometimes the rule, sometimes the exception, 264-265. Origin of punishment for false testimony, with oath in ecclesiastical courts, 265. Bill in Equity, 266. Pleading, 267. Statements of parties so allowed, shown to act as evidence, 267-268.
- — Uses of, to Judge & Co., without the help of writing, vii. 268-270.
- — Origin and history of, vii. 458.
- — How provided against in the Constitutional Code, ix. 590-591.
- Mendacity-serving information**—Prevention of, a reason for restricting publicity in courts of justice, vi. 361-362.
- Mendham**—Thomas, an instructor of Beutham in his childhood, x. 8.
- Mendicity**—Abolition of, one of the collateral ends of a system of Poor-laws, viii. 401-403. See Pauper Management.
- Mental Faculties**—Enumeration of the, viii. 281-282. Perception, 281. Judgment, ib. Memory, ib. Deduction, ib. Abstraction, ib. Imagination, ib. Invention, ib. Methodisation, ib. Attention, ib. Observation, ib. Communication, ib. Comparison, or alternately applied attention, 281-282. Synthesis, 282. Generalization, ib. Induction, ib. Analysis, ib. Distribution, ib.
- Mental facts.** See Psychological.
- Mental imbecility**—Impropriety of holding, as a ground for exclusion of testimony, vi. 105; vii. 427-432. See Imbecility.
- Mental injuries** as distinguished from other personal offences, i. 114-115.
- — Effect of the time or place of infliction on, i. 174.
- — Their place in the subdivisions of the Penal Code, iii. 164.
- Mental operations**—Classification of, viii. 223-229. See Logic.
- — Desires, as caused by pleasures and pains, the source of, viii. 279-281.
- Mental Pathology**—Axioms of, as a ground for legislative arrangements, iii. 224-225.

- Mercantile extortion**—Publicity as a remedy for, i. 554.
- Merchandise**—Definition of, iii. 36-37 n.
- Merchant of Venice**—The main incident of, an illustration of the anomalous laws which judges should be allowed to suspend the operation of, ix. 509.
- Merchant seamen**—Plan for protecting from oppression by a system of Registration, and of summary adjudication on complaints, ix. 409-415. *See* Defensive Force—Shipboard oppression obviated.
- Merchants**—Settlement of accounts between—Judicatories for, ii. 181-182.
- Mercier**. L'an 2440, by, noticed, ii. 204 n.
- Mercury**—Denial of the freezing of, by a physician, vii. 95.
- Mercy**—Exercise of, by a sovereign, in pardoning criminals, presupposes tyranny, i. 520; iii. 619-620; ix. 605-607.
- Power of, in a sovereign, supports notions of Divine right, i. 529.
- False applications of the power of, vii. 258-259.
- a word in the vocabulary of tyrants; predicates injustice, and is used for the gratification of its exercisers, ix. 36-37, 605.
- Merger**—Doctrine of, vii. 440.
- Merit**—Prodigality in reward operates against, ii. 200-201.
- Merits**—Decision of suits on grounds foreign to the, a device of Technical procedure, v. 11.
- Decision of suits on grounds foreign to, a grievance charged in Petition for justice, v. 476-480. Flagrant abuse in the very language employed, 476. Decision according to merits being the only right one, the other must be wrong, 477. "Nullification the great instrument, ib. Judge-made law has some analogy with justice when it is on the merits, but when foreign to the merits is the strongest case of *ex post facto*, 477-478. Disappointment-prevention principle infringed, 478. Perfection of arbitrariness, ib. Mis-seated punishment, 478-479. Peremptory and dilatory effects of nullification, 479. Former the most complete injustice, ib. But the other creates delay which is to an extent denial of justice, 478-480.
- Decisions according to, and not according to—the alternative animadverted on, iv. 353; vii. 257.
- The system of deciding according to, or not, at discretion, compared with the precautions for obviating the practice, in the Constitutional Code, ix. 514.
- Merlin**—Mr—His contrivance for enabling masters to give directions to their workmen, iv. 84.
- Merrivale**—Mr—His letter on the Chancery commission, noticed, x. 563.
- Mesmer**—The detection of, noticed, i. 568.
- Mesne process**—Arrest in, vi. 136.
- — No arrest in, in Scotland, vi. 181 n.
- — Arrest in; how created by the struggles of the courts to monopolize business, v. 491-494. A process not to be blindly followed as matter of form, but requiring nice distinction, 491-493. Invests any man who will take a false oath with the power of a judge, 493. How the courts outbid each other in doing service of this sort, 493-494.
- — Law as to arrest in, altered in England, vi. 178 n.
- Messenger** as a judiciary officer in the Constitutional Code, ix. 466.
- Messengers and Prehensors** in Proposed Equity Despatch Court—Functions of, iii. 376-381.
- Judiciary—Substitution of Letter-post to, iii. 378, 379.
- Judiciary—Provisions for, in Constitutional Code, ix. 636-637. Purpose—to cause knowledge to be had of a written mandate from a judge, ib. Arrangements by Justice Minister and Interior Communication Minister—Letter-post, ib.
- Messing**—Military. How to accommodate general economy with the privileges of individual wealth in, ix. 378-379.
- Metals**—Precious. Effect of increase of, with relation to that of commodities, iii. 46, 69-70.
- — Prejudices as to limiting exportation of, iii. 70. Fortunate inefficacy of the attempts, ib.
- Metaphor**—Nature of, and difficulty of keeping entire, viii. 247.
- Metaphysical division of jurisdictions**—viz. different courts for different sorts of causes, iv. 331.
- Metaphysics**—Nature of, and connexion with logic, viii. 220-221.
- identified with logic, and defined, in the Common Place-book, x. 510.
- Reason of unpopularity of—wish to avoid exposure of favourite errors, viii. 221.
- Metcalf**—Philip—Letters from Bentham to, x. 295-296.
- — noticed, x. 285, 312, 412.
- Metelin**—visited by Bentham on his way to Russia, x. 151-152.
- Meteorology**—Defined and located in the Chrestomathic system of Instruction, viii. 32.
- Source of experimental knowledge of, in a system of Pauper management, viii. 426.
- Method**—what it consists in, vii. 29.
- in the laws—Advantages of, i. 324.
- Considerations regarding, in a Code of Laws, iii. 161-163, 236.
- Fallacious objections to, ii. 463-464.
- an object of invention and discovery, and when achieved an instrument in their service, viii. 76.

Methodisation as one of the human faculties, viii. 75 n.

— a faculty not necessary to the teacher or learner, viii. 76.

— or collective denomination—The mental operation of, considered in connexion with logic, viii. 226-227.

Methodisation—Logical—Subjects to which it applies, viii. 259-260. Distinction to be kept between the mental operation and physical arrangement, ib.

— as applied to objects, viii. 260-261. Physical and Psychical—real matter and ideas, 260. Mode by succession, or priority and posteriority, through place and time, 260-261. Psychical mode by connected arrangement, 261.

— — Purposes to which it is applicable, viii. 261-262. The other operations of Logic instruments in its hands, 261. Distinguished from, and an assistant of imagination, ib. Applies to teaching, learning, improving, and practising, 261-262.

— — The subjects of—Real and fictitious entities, viii. 262-264. Names only can be the subjects of Psychical arrangement, 262. Fictitious entities distinguished from fabulous, ib. Instances of fictitious entities—Motion—Quantity—Quality—Form—Relation, 263-264.

— — Relation between genus and species in, viii. 265-266.

— — The Porphyrian tree of the Aristotelians described as an instrument of, viii. 266-267.

— — according to scales in subalternation, viii. 267-268.

— — as applied to the three physical kingdoms, viii. 268-269.

— — The Linnæan system of, examined, viii. 269-270.

— — Rules for, in the case of objects presented by successive exhibition, viii. 270-271.

— — Application of, to literary composition, and the defects it has to obviate, viii. 271-272.

— — Its application to the assistance of the faculties of the mind, viii. 272-273. Perceptive and conceptive faculties, 272. Memory, or retentive and recollective, ib. Inventive, ib. Imaginative, 272-273. Judicial, 273.

— — The Aristotelian laws of—criticised, viii. 273-275.

Methuen—Mr, a visiter at Bowood, x. 98.

Methuen—Sir Paul—Mention of, x. 112.

Metre—restoring, or restoring the disarranged words of verse, as a school exercise, viii. 45-46.

Metropolis—The best public for watching the proceedings of Courts in, iv. 349.

Metropolitan Courts provided for in Draft of Judicial Establishment for France, iv. 300.

Metropolitan Police Magistracy—Creation of the, vii. 327-328.

Mexico—Project by Bentham to emigrate to, explained in a Letter to Lord Holland requesting his intervention to facilitate the project, x. 439-444.

— Letter to Mr Mulford on proposed emigration to, x. 444-446.

— Letters from Lord Holland and Jovelanos on proposed emigration to, x. 447-448.

— Decrease of Religious Persecution in, ii. 451 n.

— Human sacrifices in, noticed, vii. 233-234.

— The extent civilisation may reach without the art of writing, illustrated from, vi. 329.

— Interests of, in relation to a proposal for the junction of the Atlantic and the Pacific, ii. 563-568.

Meyer—J. D., Author of the History of the Progress of Judiciary Establishments—Notice of, x. 604.

Middle-agency-sparing principle, in Procedure, ii. 30-31.

Middlesex Sessions—Chairmanship of, an instance of popular election of a judge, iv. 366 n †.

— System of Registration in, noticed, i. 552.

— System of Registration in, an example of transcriptitious preappointed evidence, vi. 508-575 n.

Midwifery—Professorships of, in central towns, considered, ii. 257.

Midwives—Employment of women and men as, considered, i. 543.

— Registers to be kept by, vi. 572.

Migration of Judicatories—Provision for, in the Constitutional Code, ix. 496-500.

Miguel—Don—noticed, iv. 431; v. 534.

Mildrone—Case of, cited, vii. 423 n †.

Military—Use of the, in enforcing the mandates of a civil judge, iii. 380.

— Employment of, to guard the exterior of a Penitentiary, iv. 164-165.

Military Authorities—Proper demarcation of the power of, with relation to the civil inhabitants of the state, ix. 383-392. *See* Defensive Force—Power of non-military, &c.

Military Code—Plan of the, iii. 201-202. Limits of power as narrow as possible, but clearly defined, ib. Evils of leaving power vague, 202.

Military Department—How far it is necessary that pay should rise with power in—False views on the subject conveyed from this department into others by analogy, ix. 299-300.

Military Discipline—states of civilisation in which it may be conducive to orderly and industrious habits, ix. 417-418.

Military Economy—Observations on, by the

- Editor of the Chapter on Defensive Force in Constitutional Code, ix. 427-428.
- Military Exercises**—why necessarily excluded from the Chrestomathic system of Education, viii. 43.
- Military Force**—Profuse expenditure on, an incident of the expense of a monarchy, ix. 32.
- — Provision for, in Constitutional Code, ix. 333-428. *See* Defensive Force.
 - — How far it can be employed internally with safety to a free state, ix. 335.
 - — Method in which the Judiciary to apply for the assistance of, by the Constitutional Code, ix. 487-489.
 - — Treatise on the different descriptions of, by the Editor of the Chapter on Defensive Force in the Constitutional Code, ix. 422-427.
- Military Honours**—Adaptation of, to the other portions of society, ii. 194.
- Military Law**—Bearing of, on the Constitutional Code, ix. 40-41. Use of arms to be free to all, 40. Principle of a stipendiary force, 40-41.
- Military Tribunals**—illustration in the Spanish code of the danger of not having their province strictly defined, viii. 526-529.
- — Held as exceptions to the rules applicable to the ordinary Tribunals by the Constitutional Code, ix. 456-459.
 - — Provision for, in Constitutional Code, ix. 392-395. *See* Defensive Force.
- Militia**—Inconveniences of the establishment, viii. 420-421.
- according to the British Plan—Inadequacy of, to meet the proper ends of a voluntary armed force, ix. 345-346. An inefficient nursery for the army, 345. Oppressive and unequal, 345-346. No protection against danger from a standing army, 346.
 - of the United States—maintained to be a useless expense, ix. 346-347.
- Mill—James**—His intimacy with Bentham, x. 449-450.
- — Bentham's opinion of, x. 450.
 - — Letters from, on Libel Law, x. 450, 451.
 - — Letters from, on his Review of Bexon's application of the Theory of Legislation, &c., x. 452, 453-454.
 - — Letter from, with the strictures of a friend on Bentham's opinions, x. 454.
 - — Letter from, about his son, x. 472-473.
 - — Letter from, to Bentham, taking a view of incidental irritations arising between them, and proposing a temporary separation for the better preservation of their friendship, x. 481-482.
 - — Account of, and of Bentham's connexion with him, x. 482-483.
 - — His connexion with the Westminster Review, x. 540.
- Mill—James**—Letter to Rammohun Roy on the services of, x. 589-592.
- — Casual notices of, x. 459, 468, 485, 533, 552, 576-577, 603.
- Mill—John S.**—Notice of, x. 472-473.
- Millbank**—Transactions relating to the purchase of, for the National Penitentiary, xi. 101-102.
- Miller—John**—Inquiry by, into the state of the Civil Law in England, cited, v. 378.
- Miller—General**—Letter from, with an Account of the state of the South-American States, xi. 16-17.
- Milton**—His house in Bentham's garden, xi. 81.
- Authentication of a portrait of, x. 51-53.
 - Lines on the erection of a barrack in his garden, attributed to Bentham, x. 71.
 - Casual mention of, x. 583.
- Mimographical or Receptacular Mode of Registration**, for showing the amount of the National stock in the Public arsenals, &c., ix. 238-241. Description, 238. Application to army, navy, and health departments, ib. Practical example in draughts of areas, &c., 239. Use to the official persons in presenting a vivid and immediate representation, ib. Application to articles stored in open yards, 239-240. Method where the articles are kept in receptacles, 240. Articles in warehouses, 240-241.
- Mina**—His Projects in Spain, x. 594.
- Mind—Human**. Analytical view of the Phenomena of the, viii. 279. General division into perceptive and appetitive, ib.
- Faculties of the, which give substance to discourse, viii. 300.
 - Faculties of the—A general list of, with definitions and descriptions, viii. 74-76.
 - Faculties of —Application of methodization to the assistance of, viii. 272-273.
 - The, weakened in infancy by intercourse with the uneducated, viii. 12.
 - Strength of, would be one of the fruits of the Chrestomathic system of Education, viii. 11.
 - Confusion of, as evidence of guilt, vii. 44-45.
- Mines**—Principles of appropriation of, i. 329.
- Punishment of bondage in the, considered, i. 438-439, 441.
- Mines of Mexico and Potosi**—Effect of, on the state of money, iii. 53.
- Mineral Chemistry**—defined and located in the Chrestomathic system of Instruction, viii. 31-32.
- Mineralogy**—defined and located as a branch of instruction in the Chrestomathic school, viii. 28.
- The term Abioscopic Epigeoscopies substituted for, in the Encyclopedical Sketch of Art and Science, viii. 86-87.

Mineralogy—Connexion of the Science of, with the concerns of the working classes, viii. 24.

Mingay—Counsellor—Mention of, v. 162 n. **Mining**—Description of the art of, and its place in the Chrestomathic System of Education, viii. 34.

Minister—Prime. Provision for, in Constitutional Code, ix. 204-213. *See* Prime Minister.

— Prime, in Britain—how far necessarily the tool of the Monarch, ix. 141.

— War the greatest crime of a, ii. 556.

Ministers—Proposal for placing, in the House of Commons, without being elected, and without vote, iii. 541-542.

— The non-attendance of members of Parliament favourable to the corrupt proceedings of, iii. 500-502.

— Cases where they have been less anxious for war than the people, ii. 559.

— of the Crown—The extent to which they should have a preference in the initiative of measures in a legislative assembly, ii. 351-352.*

Ministers Collectively—Provision for, in the Constitutional Code, ix. 213-333;—

— — Ends in view regarding, ix. 213. Maximization of appropriate good—Minimization of correspondent evil, ib.

— — and their subdepartments enumerated, ix. 213-214.

— — Number in an office, ix. 214-219. Only one in an office, 214-215. Tends to the furtherance of appropriate moral aptitude—responsibility, which no one to share with him or misdirect, 215. Appropriate intellectual and active aptitude better secured, ib. Exclusion of delay, vexation, and expense—prompt action, no debating, &c., ib. Corruption and irresponsibility nourished by numbers—witness Boards, ib. Self-suppletive function removes the objection about temporary incapacity, 215-216. Control in superordinates and subordinates, 216. United States an illustration, ib. Comparison with the English Board system, 216-217. General rule—When the business of an office is too much for one, have subordinates, 217. Boards, though exempt from control of Public-opinion Tribunal, not so from the sinister control of the monarch and his assistants, ib. Reasons which may require more than one office to be vested in one man—smallness of district, &c., 218. Adjustment to population, and the progress of knowledge, 218-219. Instances of maladjustment in England—Redundance and deficiency, 219. Warning against junction of incompatible offices, ib.

— — Functions in all of, ix. 219-226. Correspondent to operations, 219-220. Names

of the subject-matter of functions divided into real and fictitious entities—things incorporeal an instance of the latter, 220.

Moveables—divided into money, and other moveables, ib. Occurrences, ib. States of persons or things, or motions of them, 220-221. Interior and exterior occurrences, 221. Important and unimportant—relevant and irrelevant occurrences, ib. Written instruments—considered in relation to the persons *by* whom, and those *to* whom they are sent, ib. Mandates: transitory and naturally permanent—spontaneous and elicited, 221-222. Ordinances, ib. Rules, Regulations, Orders, 222-223. Utility of a comprehensive formulary for the transaction of business, 223. Meaning of the term arrangements, as comprehending institutions and establishments, ib. Analysis of functions regarding persons—The Locative, Self-suppletive, Directive, Dislocative, Procurative, Custodative, Applicative, Reparative, Transformative, Eliminative, and Inspective, with their sub-modes, 224-225. Functions regarding persons, things, money, and occurrences—Statistic, Registrative, Publicative, and Officially informative, 225. Functions as to the supply, custody, &c., of the instruments through which, in the several offices, these functions are performed, 225-226.

Ministers Collectively—Subordination grades of, ix. 226-231. Meaning of subordination, 226. Powers necessary to, 227. Grades—Subordinate, Bis-subordinate, Tris-subordinate, ib. Distinction explained between superordinateness and subordinateness, and superiority and inferiority, 227-228. Illustration in diplomatic relations, 228. Accountableness concomitant with subordinateness, ib. No difference in salary on account of superordination, ib. Cases where there may be accounting, as between functionary and functionary, without actual subordination—Public works, &c., where skill required, 229. Distance between subordinate and superordinate may produce the same, ib. The Finance Minister's functionaries merely accountable, ib. Settlement of number of grades, ib. Departments in which they will be few—Election, Legislation, ib. Department in which there will be most—the Army, 229-230. Illustrations of extravagance from multitude of grades, 230. Legislation Minister the fewest grades, 230-231. A Registrar in every considerable directive office, ib. Clerk the lowest in each, 231. As few intermediate grades as possible between the minister and acting functionary, ib.

— Self-suppletive function of, ix. 231-232. To prevent interruption of busi-

ness—a person named on immediate entry to office, 231. Causes justifying occasional deputies, 231-232. Certain subdepartments where the system unsuitable—army, navy, &c., 232. Reasons for expecting a supply of candidates, ib.

Ministers Collectively—Statistic function of, ix. 232-253. *See* Books.

— — Requisite function of, ix. 253-257.

Used where Procuration mandates, or written instruments to supply articles for the use of the public as restricted by legislative authority, do not suffice, 253-254. Consists of application for the article to the legislature, or a functionary authorized to give it, 255. Heads of the instrument, ib. Method of dealing with, ib. Checks, ib. Responsibility for making application when necessary, ib. An outset supply at commencement, ib. Regulation of future supplies, 255-256. Departments where power of self supply necessary—military and naval, 256. Considerations of economy between fabricating and purchasing, ib. Form of the Instrument of Requisition—clearness, conciseness, absence of superfluous complimentary expressions, uniformity, legibility, cheapness, stamp, &c., 256-257.

— — Inspective function of, ix. 257-260.

Involves visitation, 257. Once at least each minister to visit the several offices of his department, ib. Uses—seeing to the regularity of the registration, &c., the supply of all official deficiencies, making observation of the qualifications, hearing complaints, &c., 257-258. Places, offices, and functionaries to be visited, with relation to the several subdepartments, 258. Special Inspection visits, Progresses, and circuits for particular purposes, 258-259. Arrangements where various ministers inspect the same establishment—not to do so jointly, 259. Cases in which the visits of more than one minister may be so required, ib. Considerations as to expense, and time occupied, 259-260.

— — Officially-informative function, ix.

260-263. Comparison with evidence, 260. Information analyzed—spontaneous and unspontaneous—communicated and received, 260-261. With special exceptions, all occurrences to be communicated to the Legislature and the Prime Minister, 261. Considerations as to presumptive evidence of receipt of information, and responsibility to act on it, 261-262. Absence of any such system in this country, and consequently no means of checking official delinquency, unless in the cases where a party triumph is gained in favour of inquiry, 262-263.

— — Information-elicitive function, ix. 263-264. The simply receptive mode and the extractive, 263. When both parties are

officials little difference, but in the instance of non-officials, extractive gives power and jurisdiction, ib. Precautions against abuse of power, 263-264. Right to extract information for the defence of the country, considered, 264. Precautions against inquisitorial exercise, and especially of inquiries as to religion, ib. Obligation of making communication in cases of threatened calamity, &c., ib.

Ministers Collectively—Melioration-suggestive function of, ix. 264-265. Used where practice of an office seems to need correction, 264. Involves the Judicative, Ratiocinative, and Eventually-emendative, 264-265.

— — Term of service of, ix. 265. For life, and the reasons,—increase of appropriate knowledge, judgment, and active talent, ib.

— — Attendance of, ix. 265-266. In-door service and out-door service to be considered in the arrangement, ib.

— — Remuneration of, ix. 266-271. The expense-minimizing more urgent than even the aptitude-maximizing principle, 266. Bad effects of extravagant salaries, ib. Competition, 266-267. Liberality at the public expense characterized as waste, 267. Services ordinary and extraordinary, ib. Rewards—pecuniary and honorary, ib. Proper mode of conferring honour, only by increase of what is natural, ib. To be done judicially—Recordation and publication of opinative and imperative decree, 267-268. Given as the result of a suit before a judicatory—the suit described, 268. Examples of titles of honour and ensigns of dignity in use, ib. In comparison with these which are factitious and independent of merit, the present plan adjusts itself to the merit, and is liable to injustice only from defective evidence, 269. Power of conversion into an arbitrary government, if the authority were in the hands of one, ib. No ultra-concomitant remuneration, by superannuation allowances, pensions of retreat, &c., ib. Condemnation of mislocated remuneration—given to another than the person who has done the service, 270. Extravasated—where in addition to the earner some other person (as his son) rewarded, ib. Examples, ib. Illustrations of the former—rewarding superordinates for service of subordinates, ib. Of the latter—pensions, &c., ib. Extreme case—hereditary legislators, 269. Official service by an unofficial person is as if he were, *pro tempore* official, 269-270. Illustrations—national defence, seizure of depredators, &c., 271. Cautions against fraud in such claims, ib. Salaries of the various ministers paid quarterly in advance, ib.

— — Who locable as, ix. 271-283. Choice

to be in Prime Minister, whose election subject to the responsibilities provided, is absolute, 271. For minimization of expense, he has, among those shown to be capable, the means of ascertaining who will do the duty cheapest, 272. Power of dislocation a check, *ib.* Two periods in the qualification of candidates—the preparation and the consummation, *ib.* Publication of office calendar, with list of situations, *ib.* Situations of talent, 272-273. Situations of simple trust, *ib.* Situations of talent and trust, *ib.* Analysis of various official situations, with specification of the talents and acquisitions specially requisite for them, *ib.* Locable list for names of qualified candidates, 274. A judicatory for deciding who are to go on the list—called qualification or examination-judicatory, *ib.* A Quasi-jury of the instructors, *ib.* The mode of procedure, as compared with that of the legal judicatories, *ib.* Voting both secret and open, *ib.* A plan for the secret voting, 274-275. Mode of scrutiny, 275. Method of taking the open vote, 275-276. From the Quasi-jurors being liable to influence, secret votes only taken, 276. Probability of the Legislature adjusting the mode of voting to the results of experience, *ib.* How topics of examination to be provided, *ib.* Moral character, *ib.* Preparation of Locable list, 276-277. Method of advertisement for instructors, 277. Arrangement of emolument of instructors, with a view to graduating it to value of service, 277-278. How the locable list to be provided for in the interim before the termination of the consummation period, 279. Lot as a means of fixing the subjects of examination, and method of putting it in practice, 279-283.

Ministers Collectively—How located, *ix.* 283-294. Advertisement inviting competition, those on the Locable list bidding who will do the duties cheapest, 283. Security where trust involved, *ib.* Instrument of location and its heads, 283-284. Disposal of exemplars of the instrument, 284. Other securities, if deemed necessary, to be provided by the Legislature, 285. Like proceeding as to subordinates, *ib.* None but those on qualification list locable, except in situation of simple trust, where good security given, *ib.* Locatee must be of age—exceptions for consideration, the army and navy, *ib.* Considerations as to rising by gradation, 284-285. Where a minister locates subordinates, Prime Minister to confirm, 285. Army, navy, and foreign diplomacy—cases in which, from distance, it may be necessary to have the initiative in other hands than the minister, *ib.* Mode of exercise of the locative function, 285-286. Deputies to be

taken from the Locable list, 286. Responsibility for mis-location, but acts done by the persons not to be null, *ib.* The pecuniary-competition principle defended, 286-293. (*See Pecuniary Competition.*) Concluding instructions to the Public-opinion Tribunal—on it depends the support of the system against the sinister interest and arguments brought against it, 293-294.

Ministers Collectively—Dislocable how, *ix.* 294. By the Prime Minister and the Legislature, *ib.* By the Constitutive, as in the case of legislators, *ib.* Not by judges.

— Subordinates of, *ix.* 294-302. The Directive, Statistic, Self-supplive, Requisite, and Melioration-suggestive functions, 294-295. Term of service to be, with stated exceptions, for life—reasons, 295. Attendance to be fixed according to circumstances, *ib.* Remuneration—no increase for length of service, 295-296. Reasons against increase of remuneration on account of longevity—in all these cases departure from the rule of value, and that of arbitrary preference introduced, 296-297. Location—nomination by Minister of Department—confirmation by Prime Minister, 297. Provisions for expeditiously filling up vacancies, *ib.* Question considered, whether on a vacancy the situation shall devolve as of course on the Depute-permanent, and reasons against, 297-298. Reasons for permitting the use of the qualification-examination in the case of location to higher office, 298. The pecuniary competition may be employed where a depute succeeds his principal, 298-299. With these principles the system cannot properly be termed one of promotion, *ib.* The view that the scale of power and the scale of wealth must correspond taken by a false analogy from military gradations, *ib.* False notions of the extent of the necessity even in that department, 299-300. Case of functionaries employed in more particular work—considerations as to a preference between contract and employment in such cases, 300. Where sinister interest active, succession by simple seniority may have its advantages, 300-301. Where the system is to give merit its due weight, remunerating mere seniority is unjust to merit, 301. Subject to restrictions, and exceptions in case of the army and navy, the subordinates are displaceable by the respective ministers, *ib.* Cases for incidental power of suspension by others, 301-302.

— Insubordination obviated, *ix.* 302-304. Act done by a subordinate against a super-ordinate or co-ordinate, such as to injure the public service, 302. Quasi-In-

subordination commissible by members of the public in character of Suitors, Inspectees, or Evidence-holders, *ib.* How disturbance producible in the exercise of a function, 302-303. Advantages of having the conduct of officials in all departments under public cognizance, 303. Evil effect in a free state of privately founded institutions for public purposes yet not under public control, *ib.* Instances—hospitals, schools, &c., *ib.* Rules for good behaviour applicable to the Public in general in their transactions at the offices, and means of enforcing, 303-304.

Ministers Collectively—Oppression obviated in relation to, *ix.* 304-313. Persons to whom applicable—oppressors, administrative functionaries; oppressees—individuals at large, 304-305. Shapes of oppression of individuals at large, 305. Examples as against an individual in the capacity of suitor, *ib.* In the capacity of Inspectee, *ib.* In the capacity of Evidence-holder, 305-306. Shapes of oppression of functionaries, 306. Remedies—analysis of their kinds, *ib.* Directly applying remedies—where the oppressor of a grade inferior to that of minister, 306-307; where the oppressor a minister, 307; where he is Prime Minister, *ib.* Indirectly applying remedies—Rules of Department, Publicity, Evidence, Registration, Complaint-book, &c., *ib.* Rules of Department—self-regarding prudence, extra-regarding prudence, negative effective benevolence, and positive effective benevolence, 307. Considerations as to how far the Penal Code may be brought in aid of their enforcement—Illustration from the Articles of War, 307-309. Case where the oppressee is a subordinate Functionary, 309. For protection against unjust displacement, a means of trying the merits of the case before a judiciary, 309-310. Provisions as to suspension, 310. Set of formalities for removal from office applicable to all the functions except the army and navy, 310-311. Formalities for suspension, 311. Different kinds of transference—Permanent to a grade not inferior, Temporary to do.,—Permanent to an inferior, Temporary to do., 311-312. Degradation, 312. Stoppage of Promotion definitive and temporary, *ib.* Publicity of all proceedings except in excepted cases, *ib.* Disposal of Exemplars of the Instrument, 312-313.

— — Extortion obviated, *ix.* 313. Different species of it, *ib.* Reference to Penal Code and Provisions against oppression, for the remedy, *ib.* Illustration in proceedings before Masters in Chancery, where three attendances charged for when one made, *ib.*

Ministers Collectively—Peculation obviated, *ix.* 314-316. When amounts to an ordinary offence—Remedy in the Penal law, 314. Case where friends or relations favoured as in public contracts, *ib.* No objection to, when the public eye on all the proceeding, *ib.* No other remedy but publicity, 314-315. Rules applicable to offices of mere trust, 315. Illustrations of forms of peculation, 315-316.

— — Legislation-regarding functions, *ix.* 316. Have as to measures the Argumentative, Initiative, and Responsive functions—no vote, *ib.* Bound to attend, *ib.* Other functions in common with Judges—contested-interpretation-reporting; Eventually-ementative, &c., *ib.*

— — Securities for appropriate aptitude in the case of, *ix.* 316-324. Subject-matters for consideration—Elements of aptitude, Motives to, Sanctions for, Persons to whose conduct applicable, Persons by whom applied, Purposes—or Evils to be prevented, Relative time of application, 316-317. Enumeration of the securities common to the system, Registration, Publication, Dislocability, Responsibility, &c., 317-318. Character-Index and Official merit Register, 318. Demerit Register or Delinquent List, and its heads, *ib.* Tables of Functionary's and visitors' Department Rules hung up, *ib.* No premiums allowable for extra despatch, 318-319. Formalities through which, on special occasion, exertion may be remunerated, 319. Responsibility for subordinates where any evil has occurred which vigilance could have obviated, 320. Subjection to the power of the Public-opinion Tribunal, *ib.* Complete subjection to the legal Tribunals, 320-321. Legislature to be careful in assigning to all the necessary authority, so as to prevent assumption of arbitrary powers, 321. The legislature always sitting, and the ministers requiring to attend, arbitrary authority only necessary for distant officials, *ib.* Precautions, *ib.* Instances and illustrations of abuse—manner in which it creeps in: the arbitrary power first employed for good purposes, and gets a good character, 321-322. Defended on ground of precedent, 322-323. Illustration of the application of judicial arrangements to official responsibility in courts martial, 323-324.

— — Architectural arrangements for, *ix.* 325-333. Secrecy or publicity should be obtainable as either may be desired, 325. Chief need of secrecy in the elections, *ib.* Chief need of publicity, the judicatures, 325-326. Next the administrative, 326. Preliminary explanations to the arrangements, *ib.* Means of

- ranging the offices of all the ministers except the Election and Legislation, so as to make them accessible to the Prime Minister, 326-327. Conversation-tubes from the Prime Minister to each of the others, and from each minister to every other, 327. Panopticon or Inspection principle, *ib.* Other arrangements for transmitting documents, &c., *ib.* Waiting-boxes for suitors having application to make at the several offices, and routine of audience, &c., 328-329. Public and Private waiting-boxes, and their respective uses, *ib.* Means of securing secrecy where it is desirable, 329-330. Cases where this likely to occur—illustrations, 330. Cases—Information of contraband; Information for reward, *ib.* Rewarding informers vindicated, *ib.* Those who impede the detection of the offence accessory, *ib.* Considerations whether the ministers are to have habitations under the official roof—conveniencies from accessibility, security, &c., opposed by occupation of room, 330-331. Comparison of the facility and cheapness of such a means of accommodating the heads of a government, with the monarchical system and its expense, 331. Preservation of the buildings and property from destruction, *ib.* Psychological causes of destruction—foreign and internal adversaries, *ib.* Causes of furtive abstraction, 332. Correspondent safeguards—against destruction a military guard, *ib.* Evils arising in a monarchy, from the officials being too great to be subjected to the trammels necessary for accessibility, &c., 332-333. An argument against the monarchical system, 333.
- Ministers severally—Provision as to, in Constitutional Code, ix. 428-453. *See* Election Minister; Legislation; Army; Navy; Preventive Service; Interior Communication; Indigence relief; Education; Domain; Health; Foreign Relation; Trade; Finance.
- — Provision in Constitutional Code for terminating conflicts of authority among, ix. 452.
- Ministers—Sublegislation—Provision for, in the Constitutional Code, ix. 643.
- Ministers—Parochial—Proposal to give the duty of making the census returns to, x. 354-355.
- Ministerial service—Claim for establishing family fortunes as the remuneration of, controverted, v. 292-294.
- Ministry—Confidence of a Sovereign in, decreases his independent power, i. 574.
- Cases in which it may be interested particularly unmeet for judicial privacy, vi. 369-372.
- Minors—Why interdicted from contracting, i. 332.
- Minors—Reasons for excluding, from the franchise, iii. 462-463.
- Provisions in Dispatch Court Bill for guardianship of, iii. 386.
- How to be kept from witnessing indecent exposures in Courts of Justice, vi. 367.
- Minorca—Notice of the operations against, by the Spanish, x. 112.
- Minority—Proper principles of fixing the age at which it should terminate, i. 125, 348.
- Minutes of previously collected evidence—Whether they should be admitted as evidence in a new litigation? vii. 128.
- Minuted evidence, or supposed oral through written, examined, vii. 138-139.
- Minuting testimony, vi. 408-419. *See* Notation.
- Mirabeau noticed or quoted, i. 153; x. 87, 185, 199, 207, 212, 216, 217, 219, 223, 262.
- Miracles—Fraudulent, considered in connexion with evidence, vii. 572 n.
- Those at the tomb of the Abbé Paris cited as an illustration, vi. 271.
- Miranda—Don Francis de—An account of, x. 457-458; xi. 19.
- — Letter from, x. 468.
- — Death of, x. 487-488.
- — contemplated a plan of communication across the Isthmus of Darien, ii. 561.
- Mirth at expense of a party wronged—Obviation of, ii. 114.
- Mischief of an act—Elements that constitute the, i. 215-216.
- of an act—Consequences of, i. 69-76;—
- of an act—Shapes in which it may show itself, i. 69-73. Tendency mischievous, when consequences so, 69. Mischiefs primary and secondary, *ib.* Former, original and derivative, *ib.* Secondary mischiefs—pain, and danger, *ib.* Illustration, 69-71. Division of mischief, according to its *own nature*, according to its *cause*, and according to its *object*, 71. Simple and complex, positive and negative, *ib.* Self-regarding and Extra-regarding, *ib.* Illustrations—Intoxication, non-payment of tax, 72-73. Extra-regarding only, that produces alarm, 73.
- of an act—How intentionality may influence, i. 73-76. *See* Intentionality.
- of the first and second order distinguished, vi. 535.
- of the first and second order—Difference between with reference to the objects of procedure, ii. 20-21.
- of the first and second order, considered with reference to danger of Misdecision by Juries, ii. 123-124.
- caused by an offence, justificative of expense in punishment, i. 400.

- Mischief caused by offences**—Compensation for, i. 371-388. *See* Satisfaction.
- outweighed by benefit renders punishment unmeet, i. 84.
- The dread of, from change—Causes of, ii. 418-419.
- Mischievous disposition** distinguished from beneficent, i. 61.
- Mischievousness** the criterion of the extent of an offence, i. 237.
- Miscollocation in legislative composition**—Remedies for, iii. 268-269.
- Misconduct**—Causes of, analyzed, i. 217-218.
- of Judge—Publicity a security against, vi. 355.
- Misdecision**—Definition of, vi. 10; ix. 25.
- an expression not mentioned in law-books, vii. 388.
- Comparative mischiefs of, according as it is on the side of the plaintiff or defendant, considered, vii. 591-593.
- Publicity a security against, vi. 355.
- Exclusion of evidence no security against, vii. 386-390.
- Arrangements for indicating the amount of danger of, from the admission of makeshift evidence, vii. 161-162.
- Arrangements for diminishing the amount of danger of, from makeshift evidence, vii. 162-164.
- Misdemeanour**—unintelligibility of the term, vii. 412.
- Procedure by indictment in, considered with reference to modes of Extraction of Evidence, vi. 474-476.
- tried in absence of the accused, vii. 226 n *.
- Difference between, and felony, as to collection of evidence in English practice, vi. 471.
- Miserliness, Stinginess, &c.** as designative of motives, i. 198.
- Misfortunes**—Kinds of, that should be compensated by the public, i. 387.
- Misgovernment**—Examination of the elements of, in connexion with the Constitutional Code, ix. 46-64. *See* Good Rule and Bad Rule.
- Misinterpretation of confessorial evidence**—Effect of, vii. 33-34.
- Misjudgment**—Causes of, analyzed, i. 217-218.
- Misrepresentation**—two means of; making what is clear obscure, and what is obscure clear, v. 53.
- Recommended in Hamilton's *Parliamentary Logic*, ii. 386.
- The securing facts against, by recordation, considered, vi. 79-80.
- Misrule**—Securities against—adapted to a Mahomedan state, viii. 555-600.
- — a distinct expression, and preferable to Declarations of Rights and the like, used for Constitutional purposes, viii. 557-559.
- Defined and explained, viii. 558-559.
- Bad Government, 558.** On a small scale, vexation—on a large, oppression, *ib.* How far concessions by the Government a protection against, 559.
- Misrule**—Shapes of, viii. 559-560. Sufferers all determinate—private offences, 559. Sufferers indeterminate—profuse expenditure, &c., *ib.* Immediate sufferers determinate—prospective indeterminate: political persecution, 559-560. Analysis of modes of, 560.
- Monarchical. Sinister interest, not upright prejudice, the cause of, ix. 138-139.
- Misrepeated punishment** analyzed, i. 470-490.
- Missionaries**—Usefulness of a knowledge of the principles of Universal Grammar to, viii. 185-186.
- Mississippi Scheme**—The, characterized, iii. 71.
- Missive Mandate in judicial procedure**, ii. 54.
- Mitford**—the name of a companion of Bentham in his boyhood, x. 28.
- Mitford**—William, the Historian—Notices of, ii. 442; x. 33, 40.
- Mitford on Equity** quoted, viii. 296, 303.
- Mixture**—Criticism on the application of, as a quality, to the Constitution, iii. 450-451.
- Mobs**—Proper methods of dispersing, i. 370.
- Tendency of to be orderly, in a free state, ii. 311.
- Plans for the sure dispersal of, prevent the existence of, iv. 108.
- How to protect prisons from, by locality and construction, iv. 105-109.
- Models**—Method of registering national stock in arsenals by, &c., ix. 238-241.
- Moderate**—Use of the word in procuring delay of reforms, ii. 433-434.
- Moderate Reform in Parliament**—Inadequacy of the proposed systems of, iii. 516-521.
- Modesty**—How far regard for, justifies judicial privacy, ii. 44.
- Official arrogance under a veil of, ii. 411.
- Appearance of, in men of genius, often the produce of skill and knowledge of the world, iii. 49.
- Modification as an absolute fictitious entity of the second order**, vii. 202-203.
- Modifications**—Rules for the clear expression of, in discourse, viii. 317.
- The language which has the greatest number of words most capable of expressing, viii. 187.
- Mohammed**—Mirza, Khan—Account of, x. 534.
- Moir**—Lord. The attempt of, to form an administration referred to, x. 468.
- Molière**—Bentham's impressions from the perusal of, in his boyhood, x. 21.
- quoted, vii. 71.
- Monarch**—Effect of giving to him greater legal securities than to individuals at large, ii. 121.

Monarch—Corruptive influence of the, ii. 440, 445.

— Independence of representatives on the, provided for, iii. 454-457.

— Practice of, in granting charters to colonies—and considerations as to the limitations on the legality of such charters, iv. 258-263.

— The—Use of a Peerage to, as a means of corruption, iv. 432-437.

— Sinister interest of—how it formerly perverted judicature, vi. 10-11.

— Opulence of, dependent on that of his subjects, viii. 597.

— Attributes claimed by, and conceded to, x. 70.

— Instances in which abdication has taken place by a, iii. 527.

— Various kinds of, in Britain, iii. 563 n.

— will only part with power from terror or impotence, viii. 542.

— How far a written concession from, in the form of a Charter, Declaration of Rights, &c.; may be a security against misrule, viii. 575.

— Considerations as to what inducements there may be to, in a partially civilized state, to grant security to person and property, viii. 592-600.

— Laudation he will receive when he parts with any of the wealth oppressively raised by him, ix. 72-73.

— The prerogative of mercy capriciously used by, in furtherance of tyranny, ix. 36-37.

— An absolute—Interest he has in the security and wealth of his people, v. 274; viii. 597.

— An absolute, not opposed to securities which do not interfere with himself, ix. 194-195.

Monarchy—The nature of, as the supreme operative authority in a state, ix. 128-135. *See* Operative.

— The inequality of, as a system of Government, ii. 271.

— Government by. Blackstone's views of the qualifications of, criticised, i. 275-277.

— Supporting the dignity of—Evils committed under the plea of, iii. 438-445.

— The—a trust, iii. 506, 507.

— Laudation of the principle of, purchased by corruption, iv. 435.

— Ascendency of the interest of, in the Constitution, iii. 438-445.

— Disclamation by the author of a wish to extinguish, iii. 441, 451.

— The factitious additions that are made by, to the natural aristocracy of civilized nations, iv. 558.

— the simplest form of government, and that adopted by barbarians, viii. 471.

— The system of, creates severe laws for the protection of the monarch, to the prejudice of the security of individuals, viii. 520-521.

Monarchy—The causes of division which necessarily weaken a, and give power to public opinion, viii. 570-571.

— Impossibility of separating the Ruler in a, from sinister interest, and making his interest common with that of the people, ix. 7.

— The various species of, incapable of containing proper securities against misrule, ix. 10.

— The incidents of profuse expenditure of a, ix. 30-34.

— The offence of conspiracy, and the law of libel, incidents of a, ix. 37-38.

— Reasons against, as a form inferior in utility to a Republic, ix. 101-103.

— Its instruments, corporeal and incorporeal, described, ix. 134-136. Enumeration, 134-135. The soldier, 135. Lawyer, ib. Priest, ib. Connexion between them, 135-136. Incorporeal Instruments—Force, Fear, Corruption, and Delusion, ib.

— How far the interest of the monarch in, conformable to the universal interest, ix. 136-138. Interest in the people merely as subservient to his own, 136-137. Expense and corresponding aptitude compared, 137. Smallness of his interest in respect to the objects of distributive law—subsistence, abundance, security, and equality, ib.

— Peculiar antipathy to the last, ib. His interest in the penal law, to turn it entirely to his own objects, 137-138.

— Causes of misrule in a, ix. 138-139. Attributed to the necessary sinister interest engendered by the office—not upright prejudice, ib.

— Inaptitude of a limited, with a representative body as a check, ix. 140. Necessity for corruption, which more expensive and demoralizing than simple self-gratification, ib.

— A mixed, having an aristocracy—these the dependants and instruments of the monarch, and not co-equal, ix. 140-141.

— Fallacy of bringing personal character of monarchs as an argument in favour of, ix. 141-142. George III. a good family man—mischiefs he did to the nation, ib.

— Influence of, on the state of judicature, ix. 142-143. Alleged incorruption of English judges—the having to look to the sovereign for promotion a means of corruption, ib.

— Memorandum on the state of those who live under a, x. 588.

— A mixed—Can never continue stationary, ii. 445.

— A mixed—Interest which the various departments of, have in opposing securities against misrule, ix. 195-196.

— Unlimited compared with limited—latter more economic than the former, ix. 28-29.

Monasteries—Dissolution of, accomplished, so as to attack security of property, i. 320.

Monasteries—Dissolution of. Effect on liberties of Parliament of the money obtained by, iii. 514.

Monastic system—Effects of, on society, i. 549.

Money—Love of. Dangerous nature of offences occasioned by, i. 75.

— Attempt to force up the value of, an attack on the security of property, i. 319.

— considered the measure of all things in English law, i. 542.

— Aristotle's dictum as to the barrenness of, iii. 16.

— Method in which it fructifies sketched, iii. 16.

— Actions for payment of, ranked as graduable, ii. 84.

— as a source of rewards, ii. 217-218.

— Collation and ablation of—their comparative effects, ii. 272.

— The value of, in exchange, iii. 45 n *.

— Increase of, iii. 45-46, 69-70. If increased in an undue ratio to commodities becomes an Income-tax, 45, 70. Illustration, ib. n. Productive employment of the money tends to reduce the tax, ib. When used in consumption, presses again, 46. Illusory nature of the addition as exhibited in rise of prices, ib. Best state of money—a fixed proportion to commodities, ib. Decrease, a tax on those who have contracted to pay, ib. Additions by paper have the farther evil of uncertainty, ib.

— Relation of increase of, to that of capital, iii. 69-70.

— Increase of, in a nation, not increase of wealth, iii. 69.

— Investment and employment of, through the project for the conversion of stock into Annuity notes, iii. 118-119.

— Vulgar error that it is the only object of acquisition, iv. 375.

— Opinion combated, that it is the only acquisition official persons value, v. 313-314.

— False views of the extent to which it acts as a stimulus, v. 314-316.

— Public. Burke's plan for the employment of, controverted, v. 284-286.

— Influence of, as a source of interest, vii. 397-400. *See Pecuniary Interest.*

— Influence of, on testimony, vii. 573-575. *See Pecuniary Interest.*

— The sole means of procuring justice under judge-made law, vi. 101.

— Sources of loss with regard to, analyzed for the purposes of National book-keeping, ix. 249.

— Traffic in, as a subject of taxation, x. 304.

— Loans of. Impolicy of legal restrictions of interest of, iii. 1-29.

— Public. Principles on which the Finance Minister is to act as to, according to the Constitutional Code, ix. 448-452.

Money—Paper. *See Paper Money.*

Money Bill—Instance of a, commenced in the Lords, v. 567.

Money-lenders. Causes of unpopularity of, iii. 17.

Money-requisitive Function of the Government Advocate, in the Constitutional Code—Nature of, ix. 572-575.

Money Stock-book, in the system of official registration suggested in the Constitutional Code—Heads of entry of, ix. 241-242.

— — in the system of official book-keeping in the Constitutional Code, ix. 245-246.

Monitors—Employment of scholars as—part of the management of the Chrestomathio School, viii. 47.

Monitorial system—Employment of, in High School of Edinburgh, viii. 59-61.

Monopoly—Professional. Nature of, iii. 167.

— Professional, with relation to lawyers, ii. 51.

— Tax with, a proposal to tax and license stock-brokers and bankers, ii. 599-600.

— Incidence of reward in the form of, ii. 200.

— of knowledge—jargon gives to the lawyer, vii. 281.

Monopolies—considered as infringements on property, i. 319.

— The abolition of, and the substitution of taxed licenses, a means of raising revenue, x. 304.

— Sieyès' denunciation of, criticised, ii. 533.

— in connexion with colonies—Fallacies in the supposed profit of, iv. 411-414. As to keeping up prices they are baffled by internal competition, ib. May force down price of produce in existence—cannot prospectively keep down prices, 413. As to revenue—taxes on imports paid at home, and the only way to gain is to make the colonists take taxed exports, 414.

— Effect of, as regards the colony trade, considered, iii. 52-57.

— in trade—Deleterious effects of, both to the public and the holders, viii. 453. Increase of cost of commodities, ib. Injustice to those excluded, ib. Artificial increase of income to persons not trained to the proper use of money, ib.

Monroe—President, noticed, ix. 133.

Monstadt—Dr, of Heidelberg—Mention of, x. 604.

Montague—Basil—Design of, to translate Dumont's Bentham into English, x. 423.

Montague—Edward Wortley. The authorship of the work on ancient republics attributed to, claimed by Mr John Forster, x. 67.

Montague—Mr. His connexion with a negotiation between Lord North and the Rockinghams, x. 102.

Montaigne noticed or quoted, i. 321, 443 ; ii. 208, 363 n.

Montbazou—Madame—Case of, i. 437.

Montesquieu—his principle of adjusting laws to the exigencies of the particular people, i. 173 n †.

— his praise of the feudal system, i. 342.

— his view of the incompatibility of justice with liberty, controverted, v. 25.

— A Panegyrist of judicial delays, viii. 481.

— his system of dividing men into parts, of which one may be evil, the other good, x. 143.

— Estimate of, x. 143.

— noticed or quoted, i. 88, 92, 150 n †, 162, 179, 180, 183, 270 n, 341, 399, 576 ; ii. 197, 348 n ; iii. 73, 158 ; iv. 327 ; vi. 208 ; vii. 521-522 ; ix. 123 ; x. 54, 67, 145, 270, 433.

Montfort—Simon De—Germ of representation planted by, ii. 444.

— — — the founder of the House of Commons, iii. 451, 515 ; iv. 448.

Montmorency—M. De, introduced to Bentham, x. 236.*

Montrol—sends a copy of his Memoirs of Brissot to Bentham, xi. 53-54.

Montucla—History of mathematics by, quoted, viii. 169-170.

Moods of verbs—Analysis of, viii. 355. *See* Verbs.

— — — Explanation of the Psychological operations of which they are the signs, viii. 330.

Moon. The only regular and perpetual gravitating source, of motion on the earth, viii. 132.

Moore—Mr, of Fleet Street. His effort to invent a carriage to be propelled by explosion, viii. 136-137.

Moore—Thomas, noticed, x. 587.

Mora. His designed translation of "Liberty of the Press," ii. 276.

— His lectures on Bentham's opinions, in Spain, viii. 466.

Moral aptitude—Rules for securing appropriate, on the part of rulers, ii. 273.

Moral code—Promulgation of by the Legislature, by way of instruction, i. 568.

Moral causes of correctness and completeness in testimony examined, vi. 18-21, 256-276. *See* Motives ; Sanction.

Moral character of a person accused—how far it is evidence, vii. 56-61. *See* Character.

Moral faculties concerned in testimony—The, vi. 248-249.

Moral lesson—Punishment made to serve the purpose of a, i. 89.

Moral right—confusion produced by the expression, iii. 218.

Moral (or popular) sanction—Motive corresponding to the pleasures of the, i. 51-52.

VOL. XI.

Moral (or popular) sanction—Pleasures and pains of the, with the corresponding interest and motives, i. 201.

— — Punishments belonging to the, i. 453-467. Characteristic evils, 453. Casual evils—marked by intensity and extent, 453-454. May create punishments of the political sanction, 454-455. When compared to these, indeterminateness is their characteristic, 455. Diversified nomenclature for expressing the punishments of this sanction, 455-456. These punishments do not admit of accurate classification, 456. Divisibility—great, but depending on chance, ib. Equability affected by sex, age, wealth, and rank, 457. Deficiency in exemplarity, ib. Subserviency to reformation, 457-458. Certainty and expedition of the trial and punishment, 458. Forfeiture of reputation, 458-467. *See* Forfeiture.

— — Influence of the political magistrate over, evinced in the punishment of forfeiture of credibility, &c., i. 461-462, 465-467.

— — Source and direction of the, iii. 290.

— — Increase of the power, with the increase of publicity and intercommunication, x. 145.

— — Effects of, on testimony, vi. 260-261, 264-268. *See* Sanction.

— — Adaptation of the ceremony of an oath to the pointing of, vi. 320-321.

Moral sense—A partisan of, and partisan of common sense represented in dispute, vi. 239.

— — Uses made of the term, i. 8 n.

Moral sensibility and bias—Influence of, i. 24.

Morals—(private.) Their field of action distinguished from that of legislation, i. 142-148.

— Application of the Table of Springs of action as a foundation for the Science of, i. 205-219.

— The finding of the foundation of, in doing as you would be done by, considered, ii. 526-527.

— Reformation of, through instrumentality of Panopticon, iv. 39.

— How they may be taught by a rational system of laws, iv. 493.

— Why not forming a distinct branch of the Chrestomathic system of Education, viii. 43.

Morals and Legislation—Introduction to the Principles of, i. 1, *et seq.*

— — — Introduction to Explanations regarding the circumstances in which the work was composed, i. i-iv.

— — — Introduction to Reception of, by the author's friends and others, i. 252.

— — — Notice as to the editing of, ib.

— — — Introduction to—Notices of preparation of, under the title Critical Elements of Jurisprudence, x. 77.

Q *

Morals and Legislation—*See* Deontology.
 Morality and happiness—The connexion between, as a proof of design, ii. 230 n +.
 — Two codes of; that of Westminster-Hall, and that of the public, vii. 188.
 — What involved in the exaltation of religion over, x. 146.
 — The Common-place—Memorandum on, x. 147.
 — Domestic. How far it may be favourably influenced by Pauper management, viii. 419-420.
 — International—Deficiency of, ii. 552, 555-556.
 Morande—De, noticed, x. 93.
 Morangies—Comte de—Case of, cited, vi. 62.
 Moravians—The exemption of, from oaths, vi. 381, note 6.
 Mordvinoff—Admiral—Letter to, with an account of General Santander, xi. 33.
 — — Letter to, on the Constitutional Code, &c., x. 542-543.
 — — Casual notices of, x. 223, 419, 440, 445.
 More—Sir Thomas. Handle which his Utopia has given as a term of reproach against reformers, ii. 459.
 — — when Lord Chancellor, paying obedience to his father as a Puisne judge, viii. 23.
 — — — noticed, x. 276.
 Morell—Mrs—Bentham boarded with, when a child, x. 20, 27.
 Morellet—The Abbé—Letter from Bentham to, with proposal for the publication of the Political Tactics in France, with answer, x. 198-199.
 — — Correspondence with, in 1778, x. 87.
 — — — Casual notices of, x. 201, 379, 388, 395-399.
 Moreri noticed, viii. 112.
 Morgan—Mr. Principles of his Mortality Tables criticised, viii. 410-411 n.
 Morier—the orientalist, noticed, x. 150.
 Morning Chronicle—Letter to, against cruelty to animals, x. 549-550.
 Morocco—Comparison between Emperor of, and Members of Parliament, ii. 394.
 Morphoscopic Posology, or Geometry—Position of, in an Encyclopedical Sketch of Art and Science, viii. 85.
 Morris—Valentine. Visit to, by Bentham, x. 54.
 Morris—Mr, M.P., one of Lord Lansdowne's nominees—Notice of, x. 238-239.
 Mortality—Uses of Registers of, as expounded in the Constitutional Code, ix. 627-628. *See* Registrars.
 — Plan for keeping a Register of, in the Constitutional Code, ix. 628-629. *See* Registrars.

Mortality—Convict. Causes and amount of, and effect in raising a limited punishment to capital, iv. 193-199.
 — Infant. Diminution of, a collateral advantage of a good poor law, viii. 421-424.
 Mortgage—Draft for a, v. 398-399.
 — Proposed substitution of the word Land-pledge for, v. 399.
 Mortgages—whether they should be latent? vi. 581.
 — Considerations as to whether they should be negotiable, v. 400.
 — Use of registration with regard to, i. 552; vi. 575.
 Mortgagee—Inaptitude of the expression, iii. 382 n.
 Mosaic Law—Justice administered at the city gates under the, v. 544.
 Moser and Jackson—their inventions of stoves, iv. 111, 114 n, 117.
 Moses—gave an example of promulgation of laws, i. 157.
 Mother—Responsibility of, for her children, in regard to reparation for offences, i. 385.
 Mother and child—Effect of the relation between, on testimony, vi. 161; vii. 576-577.
 Motion—Explanation of the nature of, as a fictitious entity, viii. 204. Includes the idea of place and time, ib.
 — as involved in the idea of cause and effect, viii. 207-208. Endless and terminating, 207. Thelematic and Athelematic, or volitional and unvolitional, ib. Ergastic and unergastic, or fruitful and unfruitful, ib. Where it is both thelematic and ergastic, the terms end, operation, means, design, may be used, 208.
 — a fictitious entity of the first remove from real entities, viii. 197.
 — considered as a Physical fictitious entity, viii. 200-201, 263.
 — Sciences involving the predicament of, viii. 286-287.
 — as one of the Aristotelian Post Predicaments, viii. 236.
 Motion—Sources of—Analytical sketch of the several, viii. 128-148.
 — — Generation and extinction of motion, viii. 128-132. Resistance implied—which divided into counter-motion and *vis inertia*, 128-129. Necessity of the use of fictitious entities, whereby imaginary receptacles are created in which the operations take place, 129-131. The Greek story of denying the existence of motion an illustration of the want of a division of entities into real and fictitious, ib. Rest the absence of the imaginary receptacle which a body is *in*, when in motion, 130-131. Divided into absolute and relative, 131. Expression "sources of motion" preferred to *Primum mobiles*, 131-132.

Motion—Sources of—Selenic or simply mechanical source, viii. 132. So called from the moon being the only universally and steadily acting source, ib.

— — Hydropneptic or chemico-mechanical source, viii. 132-133. Falling water considered as converted into its state chemically, ib.

— — Stereoptical source—or the falling of solid bodies, viii. 133.

— — Anemistic or aeropneutic source—The air in motion, viii. 133.

— — Barometrical source—from the weight of the atmosphere, viii. 133.

— — Thelematic or myo-brachial—The will acting on the muscles, viii. 134.

— — Parallactic-suneric, or alternate gassification and degassification, viii. 134-136. The steam-engine, ib.

— — Aplosyncrotic, or simple-explosion source—Gunpowder, &c., viii. 136-137.

— — Magnetic source—Limited extent of its operation, viii. 137.

— — Electric source—also limited, viii. 137-138.

— — The galvanic source, viii. 138.

— — Antactive or reactive source—or elastic springs as reservoirs of motion, viii. 138-141. Application to time-pieces, instruments of destruction, and musical instruments, ib.

— — Eclectic-spastic source—or elective attraction, viii. 141-142.

— — Texitogenous contraction by fusion as a cause, viii. 142.

— — Stereogenic source from the expansion created by liquids becoming solid, viii. 142-143.

— — Economic source, or the utmost possible adaptation and employment of the sources at command, viii. 143-144.

— — Method of exhibiting them in systematic order, analyzed according to the Bifurcate or exhaustive system of division, viii. 144-148.

— — The mechanical powers in connexion with, and considerations whether a common denomination can be found for their qualities, viii. 146-147.

— — Perpetual motion in connexion with, and the mechanical obstacles to it, viii. 147-148.

— — Considerations as to the probability of any new cause of, being discovered in nature, vii. 85-86.

— — Enumerated, vii. 84-85.

Motion for an information—considered as a suit to find whether a suit shall be carried on, vii. 470.

Motion Causes—Procedure on, vi. 480-482; vii. 236 n*.

— — Founded on affidavit evidence, vi. 463, 469.

Motion Business—Considerations as to the

evils of, vii. 245-246. Divided into motions of course, and motions not of course, ib.

Motion for rule to show cause—Affidavit evidence considered in connexion with, vi. 476-477.

Motions (in Courts of Law) characterized as suits within suits created by the blind fixation of judicial operations, v. 471.

— Sham, in Chancery—Delay by, vii. 216-217.

Motions in legislative assemblies—Promulgation and Registration of, ii. 353-354.

— — — should not be withdrawable by the proposer, ii. 354.

— — — Rules as to, ii. 334, 335-341. Necessity for their being put in terminis—defeats falsification, 335-336. In writing, 336. Put in writing by the mover, ib. In the exact words in which it is to pass, ib. British Practice, 336-337. French Practice, 337-341.

— — — Publicity as to, ii. 314.

— — — Table of, ii. 317-320. Application of, 317-319. Description, 319. Contents, 319-320.

— — — Rule as to seconding of, ii. 358.

— — — Reading of, before debate on, ii. 358-359.

— — — Dilatory, or of adjournment, ii. 366-367.

— — — introducing legislative propositions—Form of, ii. 334 n*.

— — — voting upon, ii. 367-372.

— — — Provision for, in Constitutional Code, ix. 190-191. See Legislature.

Motions in Parliament—Operation of the system of giving notices of, iii. 502.

— — — Suggestion for having the Substance of, displayed in visible types, x. 344.

— — — Practice as to amendments to, ii. 365-366.

Motions at public meetings—Tactic as to, ii. 354 n.

MOTIVE—criticism on the etymology of the word, i. 46 n ¶.

— Synonyms to the word, i. 208.

Motives considered at large, i. 46-60; —

— Different senses of the word, i. 46-48.

— Speculative and practical—latter the subject of discussion, 46. The former divided into internal perceptions and external events, 47. Motives in prospect and in esse, ib.

— None either constantly good or constantly bad, i. 48-49.

— Catalogue of, corresponding to pleasures and pains, i. 49-56. Physical desire correspondent to pleasures of sense, 49. Pleasures and motives of the Palate, 49-50. Sexual, 50. Curiosity, ib. Wealth, and pecuniary interest, ib. Amity, ib. Moral sanction, 51-52. Love of power, 52. Sympathy, 52-53. Malevolence, 53. Self-preservation, 54-55. Love of ease, 55. No motive in itself good or bad, ib. Near-

- est approximation that can be made to such a division, *ib.* Can only be judged with reference to effects, 56. Division into social, dissocial, and self-regarding, *ib.*
- Motives—Order of preëminence among, i. 56-59. Goodwill and benevolence, 56-57. Love of reputation, 57. Desire of amity, *ib.* Difficulty of assigning a place for the influence of religion, 58. The self-regarding and dissocial, 58-59.
- Popular confusion with regard to, in the expressions good and bad intentions, i. 42-43, 44-45.
 - Conflict among, i. 59-60. Impelling and restraining, 59. Illustration, 59-60.
 - Disposition as founded on, in connexion with consequences of acts, i. 60-68. *See* Dispositions.
 - Division of, into Tutelary and Seductive, i. 65.
 - Corresponding to pleasures and pains, as enumerated in the Table of the Springs of Action, i. 197-205.
 - to the *will*, and to the *understanding*—Difference between, i. 208.
 - Operation of Pleasures and Pains in creating, i. 209, 211.
 - All human actions founded on, i. 211-212.
 - necessary to all human actions, vi. 242.
 - Impropriety of applying the attributes good and bad to species of, i. 214-216.
 - Simultaneously operating, i. 218.
 - Reasons why people attribute good to their own acts, and *vice versa*, i. 218-219.
 - Substitution of, or erroneous attribution, i. 218-219.
 - Effect of, on exertions, ii. 235.
 - Should not be attributed by Members of a Legislature in debates, ii. 363.
 - Bad—Imputation of, a fallacy used for political purposes, ii. 415-416.
 - How a more accurate knowledge may be had of another's than of one's own, ii. 477-478.
 - Attributing, gives opportunities for bias in evidence, vi. 246.
 - Influence of, considered in instructions regarding the effect of interest on testimony, vii. 567-573.
 - The kinds of, that tend to produce belief in facts disconformable to the course of nature, vii. 106-111.
 - as evidence for or against delinquency, vii. 53-55. Connexion with means, disposition, character, &c., 53-54. Motives exterior and interior, 54. Former call latter into action, *ib.* Rather neutralizes disprobabilizing, than creates probabilizing, 55.
 - as the moral causes of completeness and correctness in testimony, vi. 256-260. The cause of action and of negation to act, 256-257. Meaning and imperfectness of the term motive, 257. Defined an in-

- terest in a state of action, *ib.* Sinister as applied to interest, 258. All motives referable to the self-regarding, the social, and the dissocial, *ib.* Any motive may produce either veracity or mendacity, according to what will be the result of the testimony, 259; (vii. 394, 569-570.) No motive but what is capable of acting with any degree of force, vi. 259-260.
- Motives—Seductive—Influence of, on testimony of witness, vi. 154-155.
- tutelary and seductive, distinguished, vi. 260 n.
 - Purity of—A form of boasting had recourse to when misgovernment attacked, ix. 60-61.
 - Purity of—Sources of the pretensions on the ground of, x. 510.
 - False estimate of, by the uneducated, x. 69.
 - There should be no punishment for imputing, x. 548.
- Mottoes—Admonitory, in houses of correction, iv. 32.
- Family—Remark on, x. 5.
- Moura—Senhor, a Portuguese deputy, noticed, x. 525.
- Moveable-stock Book, in the system of official Registration in the Constitutional Code—Method of keeping, ix. 237-238, 242, 244-245.
- Moveable and real property—Factitious distinction between, vi. 543.
- Moveables—Right to, shown by possession, vi. 60.
- Moysey—the name of a school-fellow of Bentham, x. 30.
- Mulcts—Adjustment of, to pecuniary means of party, iii. 360.
- Pecuniary. Calculation of income for the purposes of, ii. 111.
- Mulford—Mr, Bentham's cousin—Notices of, x. 22-23.
- — Letters to, x. 359, 415, 425-427, 444-446, 449, 454-455, 471-472, 473-474.
 - — His death, x. 478.
- Mulford—Widow. A relation of the Bentham family, x. 4.
- Mulgrave—Lord, (the second)—Anecdote of, x. 94.
- — (the third) noticed, v. 315.
- Multipoleinding in Scotland ranked among complex actions, ii. 81.
- Multiplicate scription, for the purpose of preappointed evidence, considered, vi. 512.
- Multiplication of writings—Machines for, vi. 576-577.
- Multiplicity of witnesses—Exclusion of evidence for want of, vii. 520-531. Predicates falsehood of all men whose testimony is not supported by a certain number of others, 520. Testimony should be weighed, not counted, 521. Demand for

two witnesses examined, 522-523. Seeming exceptions to the mischief;—cases where several witnesses necessarily present, 524; Cases where the extent of the offence depends on the numbers present, *ib.* Aberrations of Roman and English law in this respect, 525-531. One witness split into two, 525. Generally inflicted by statute, not by jurisprudential law, 526. High treason, 526-528. Invented in this instance to protect the traitors of William Third's reign, 528. Remedies suggested on the plan of fictions, 529. Application of the principle to equity, 529-531.

Multitude—Favour shown to the despotism of the, *i.* 318.

Municipalities—Sublegislation of—how far compatible with supreme legislative power, *iv.* 315-316.

Murder—Application of the theory as to laws of nature to the criminality of, *i.* 287 *n.* c.

— Popularity of punishment of death for, *i.* 449.

— Duelling confounded with, in English practice, *i.* 543.

— accomplished through perjury—nature and character of the offence, *vi.* 304, 382 *n.* 8.

— Law as to, when committed by persons who have met on a different design, *vii.* 22, and *n.* †.

— The inference of, from malice, according to English practice, considered, *vi.* 55.

— Uses of registration to supply evidence of, *vi.* 571.

— Rule that body must be found, to convict of, considered, *vii.* 68-69.

— Instances of circumstantial evidence as to, *vii.* 75-76 *n.*

— Securities against, applicable to a Mahomedan state, *viii.* 588-589.

— meets approbation when on a large scale, *x.* 509.

Murray—Governor, of Minorca, noticed, *x.* 112, 114.

Museums—Kinds that are, distinguished from those that are not, beneficial to the public at large, *ix.* 451-452.

Music—Value of the art of, *ii.* 253-254.

— Use of, in prison discipline, *iv.* 18.

— Bentham's early partiality for, *x.* 32.

Musical instruments—Application of the spring as a source of motion to, *viii.* 141.

Musician—How far imagination necessary to the, *viii.* 76.

Mutilation as a punishment, *i.* 418, 461.

— How far susceptible of reparation, *ii.* 156.

Mutiny in an army—The application of the contentment-maximizing principle as a means of obviating, *ix.* 340.

Mutiny act—Benefit of the annuality of, *viii.* 537.

Mutual Improvement Society—Answers to their applications to Bentham to become their President, and chairman of their anniversary dinner, *x.* 488-489, 505-506.

Myiobrachiatic source of motion—the term applied to the will as a source of muscular motion, *viii.* 134.

Myline—Robert, the architect, noticed, *viii.* 148 *n.*

N

Nakos—Stamos, one of the Greek youths whom Bentham undertook to educate, *iv.* 588.

Name—Good—The pleasures of, *i.* 18.

— Good—Motives corresponding to the pleasures of, *i.* 51.

— Ill—The pains of, *i.* 20.

— Compulsory change of, as a punishment, *i.* 473.

Names—The efficacy of, in engendering odium, *iv.* 76.

— Means of adaptation of, to purposes of police regulation, *i.* 557.

— Honorary, for public services, *ii.* 218.

— Individual and common—former must come before the latter in the history of language, *viii.* 189, 265.

— New, in Art and Science—Limits and utility of adoption of, *viii.* 126-128.

— Proper, of opponents, should not be mentioned in debates in Legislative Assemblies, *ii.* 363.

Name-plates on doors—Plan of, for election purposes, *iii.* 585-586.

Naples—Letter from Lord Wycombe to Bentham, as to the politics of, in 1795, *x.* 309-312.

Napoleon—His services in codification, *iv.* 500.

— Despotism of, noticed, *ii.* 441, 457; *iii.* 439, 562.

— Bentham votes for the Consulate for life to, *x.* 389.

— and Cromwell compared, *iv.* 501-502.

— Opinion of, *x.* 571.

— characterized as the greatest despot the world ever saw, *vi.* 501.

— Secret system of interrogation abolished by, *vi.* 501.

— casually noticed, *iv.* 527, 544; *viii.* 521, 527 *n.*; *ix.* 87, 360; *x.* 343, 440, 565, 581.

Narbonne—M. de—Escape of, *x.* 286.

Nash—Beau—an illustration of moral influence, *i.* 467 *n.*

Nations—Absence of morality in the dealings between, *ii.* 552, 555-556.

- Nations—Proposal of a Court of Judicature for deciding disputes between, ii. 552-554.
- Inapplicability of the principles of the penal law to questions between, ii. 539.
- Law of. Blackstone's theory, that no human laws should be allowed to contradict, criticised, i. 286-287.
- Law of. Reference to, by the Romans, iii. 184. *See* International Law.
- National accounts. Publication of, recommended, i. 554-555.
- National animosities—Advantages from the suppression of, i. 562.
- National Assembly of France. Effect of admission of a numerous auditory to, ii. 326.
- — — Criticism on mode of procedure in, ii. 330-331 n.
- — — Commentary on the Draft for organization of Judicial Establishment by committee of, with Draft proposed as a *succedaneum*, iv. 285-406. *See* Judicial Establishment.
- — — Examination of the Declaration of Rights of, ii. 491-524.
- National Assembly Court—as provided for in Draft of Judicial Establishment for France, iv. 300.
- National bankruptcy—The evils of a, laid down, iii. 610-611.
- National character—Revolutions that have taken place in, i. 177.
- National debilitation—as a result of misrule, viii. 561.
- National debt—The, a preventive of war, iii. 611.
- — — Forced frugality created by paying up, iii. 44.
- — — Effect that would be created by a sponge on, iii. 81.
- — — Charge against the Radicals of designing a sponge on, considered, iii. 608-611.
- — — Taxes to pay, neither increase nor decrease national wealth—are merely the result of a former decrease, iii. 40.
- National defence—making the Poor-laws subservient to, by training to army and navy, viii. 420-421.
- — — Provision for, in Constitutional Code, ix. 333-428. *See* Defensive Force.
- National interest—Offences against the, i. 101-103, 134 n.
- National morals—Corruption of, through the instrumentality of university oaths, v. 209-219.
- National society schools—The introduction of religion as a branch of education in, considered, viii. 41.
- — — The visitation system as adopted in, viii. 47.
- National virtue. Opulence of the clergy an obstacle to, ii. 468-469.
- National wealth—wherein it consists, iii. 40-41.
- — — Offences against, as a subdivision of public offences, iii. 170.
- Nationality, national partiality, &c., as designative of motives, i. 202.
- Natural history—Physiurgic Somatology substituted for the term, in the Encyclopedical Sketch of Art and Science, viii. 86.
- — — affords the chief exercise for observation and method, viii. 76.
- — — Stage it should occupy in education, viii. 15.
- — — a specimen of inapt nomenclature, viii. 68-69, 128, 284-285. Would seem to designate history told naturally, ib.
- — — Terminology of, taken from the Greek, iii. 272.
- — — Subalternation and division as applicable to, viii. 268-269.
- — — The Linnæan nomenclature of, examined, viii. 269-270.
- — — Professorship of, 'in' central towns, recommended, ii. 257.
- Natural justice and natural equity—Uses to which the terms applied, i. 9 n.
- Natural laws—The classification criticised, iii. 157.
- Natural Philosophy—a specimen of inapt nomenclature, viii. 69, 128, 284-285. Expresses a natural love of wisdom, ib.
- — — Anthropurgic Somatology substituted for, in the Encyclopedical Sketch of Art and Science, viii. 86.
- — — Stage it should occupy in education, viii. 15.
- Natural (or domestic) procedure. Fundamental principles of, ii. 178.
- — — Arrangements of, exhibited in contradistinction to the correspondent devices of technical procedure, v. 8-14. Parties heard face to face, 8. No writings but minutes of *ridá roce* evidence, ib. No evidence but *ridá roce*, ib. Tribunals within reach, 9. Times for operations settled according to convenience, ib. Uninterrupted sittings, ib. No division of jurisdictions but the simply geographical, 10. Decision only on appropriate grounds of both law and fact, ib.; and only on the merits, 11. No statements received unaccompanied with sanction for veracity, ib. Demand and defence on printed schedules, 11-12. Uniform system of forthcomingness, 12. Plan of intercommunication—judges and parties, ib. No exemption from the law, ib. No incidental applications to be acceded to, unless on examination of party, 12-13. Truth unremittingly followed, 13-14.
- — — The system characterized, vi. 475, 505.
- — — compared and contrasted with Tech-

nical procedure, ii. 169-178; vii. 197-199, 300.

Natural (or domestic) Procedure—Proposal to have recourse to, vii. 320-321.

— Account of the existing tribunals where it is practised, vii. 321.

— Course prescribed by, in relation to recovery of debts, vi. 135.

— Burden of proof according to, vi. 136-137.

— Substitution of, to technical, urged in Petition for justice, v. 445.

Natural religion—Repugnance of oaths to, v. 457-458.

Natural right—Confusion produced by the expression, iii. 218-219.

Natural and imprescriptible rights—Fallacy and mischief of the expression, ii. 500-504.

Nature—Personification of the term, and its misapplied use, viii. 125 n.

— Blackstone's use of the term, criticised, ii. 598.

— Improbability and impossibility defined as disconformity to the established course of, vii. 83-84.

— Three modes of disconformity to the course of, viz., in toto, in degree, and in specie, vii. 84-91.

— Statements of facts disconformable to the course of—Untrustworthiness of the evidence on which they have been supported, vii. 105-106.

— Motives tending to produce affirmation of and belief in, statements of facts disconformable to the course of, vii. 106-111.

— Knowledge of the course of—Influence it has on belief, vii. 91-98.

Nature—Law of—Meaning of the term, vii. 83 n, 96.

— A phenomenon at variance with a wider may be in conformity with a narrower, vii. 97.

— Reference to, by the Romanists, iii. 184.

— Uses made of appeals to, i. 269, 341, 412.

— Use made of the term for founding a rule of action, i. 9 n.

Nature—The state of. Blackstone's remarks on, criticised, i. 261-272. *See* Government.

Naval force—Reduction of, as preparatory to a plan of perpetual peace, ii. 550.

Naval timber—Suggestions for securing a supply of, viii. 421.

Naval warfare—Characteristics of, as compared with land, iv. 415.

Navigation laws—Warlike principle of the, ii. 550.

— An evil suffered for the purpose of national defence, iii. 42.

Navy—Expense of a, necessitated by colonies, iv. 415.

Navy—A good system of Pauper management adapted to training for the, viii. 421.

— as compared with the army—posterior in order of existence and necessity, but requires more skill and science, ix. 334.

— Courts-martial of—how far different from those of the army, ix. 420-422.

— Provisions in Constitutional Code specially applicable to, ix. 402-415. *See* Defensive Force—Sea.

— Provisions applicable to, by the Constitutional Code, in common with the army, *See* Defensive Force.

— Method of registering the stores of, by plans and models, ix. 238-241.

— British—Number of high officials in, and costliness of, ix. 230.

— British—The quantity of supernumerary officers in, ix. 360-361.

— British—Abusive system of reward for services in, ii. 215.

Navy Board—Books of, an example of official evidence, vi. 555.

Navy—The Merchant—Plan for protecting seamen in, from oppression, by a system of Registration, and summary adjudication on complaints, ix. 409-415. *See* Defensive Force—Ship-board oppression obviated.

Navy-Minister—Provisions regarding, in the Constitutional Code, ix. 438-439. To give execution and effect to the Navy Code, and the orders of the Prime Minister, 438. Functions, and the subjects on which he exercises them, 438-439.

Navy-Office—Obscurity and complexity of the transactions in the, iii. 550.

Ne creat, &c.—Writ of, an example of a suit for the forthcomingness of the person, ii. 47.

Neal—John—Account of, x. 555-556.

— Letter from, x. 573-574.

— Information from, as to the sittings of the American Congress, ix. 648.

— Information from, as to the method of admitting Lawyers to practise in America, ix. 656-658.

— His suggestions on Bentham's remarks on Simple and Federative Governments, ix. 661-662.

Nebuchadnezzar's Dream—Illustration from, vi. 519.

Necessaries of life—Taxes on, are infringements of security, i. 319.

— Character of a Tax on, ii. 573.

Necessity—Nature of the term as the name of a fictitious entity, viii. 211.

— Public. Employment of the term in the French Declaration of Rights, ii. 521.

— Wills of, as distinguished from regular testaments, vi. 541-542.

— Use of, as an argument for the admissibility of evidence, vii. 167.

— The expression does not imply a quality of matter, but a degree of persuasion, vii. 80 n.

Necker—The disinterestedness and honesty of, iv. 374; ix. 291; x. 87.
 — An instance against Burke's opinion that gratuitous public service is profligate, v. 300.
 — Charges against, by Lord Bristol, x. 93.
 — Incidental notices of, i. 163; iii. 82-83 n; iv. 203 n; x. 199.
 Necker—Madame—Letter from Bentham to, x. 197.
 Necromancy—Instance of a term which has been dropped out of the Nomenclature of Art and Science, viii. 27.
 Needless-repetition-prohibiting principle in the management of the Chrestomathic school, viii. 53.
 Negative acts as distinguished from positive, i. 36.
 — facts distinguished from positive, vi. 217-218.
 — quantities—Obscurities in the subject of the multiplication of, cleared up, viii. 178.
 — exclusions of evidence, vii. 562-563. *See* Exclusion.
 Negotiability—Want of, in the case of Government securities as compared with Bank Paper, iii. 149-153.
 Negotiations with foreign nations—Publicity as to, urged, ii. 554-560.
 Negrís—Theodore, of Greece—Correspondence with, as to a Civil Code for Greece, iv. 585-587.
 Negro Slaves—Barbarous punishment of, i. 443-444.
 Neighbourhood—Offences against, how resolvable into offences against individuals, iii. 164 n.
 — Offences against, considered as semi-public offence, i. 97, 100.
Nemo tenetur seipsum accusare—Criticism on the maxim, vii. 445.
 — — — Origin of the maxim, vii. 458.
 Nepean—Sir Evan. Bentham's negotiations with, as to the Panopticon, iv. 217; x. 250, 294, 301, 307, 385; xi. 99, 113, 118, 120, 139, 141, 142.
 — — — Casual notices of, x. 359, 360.
 Nepean—Mrs Evan—Letter to, x. 343.
 Nephelognosy. Illustrative of the rise of new branches in the arts and sciences, viii. 27.
 Nero—Allusion to, ix. 605.
 Netherlands—Report to the King of the, on Houses of Peers, examined, iv. 427-429.
 Neutrality—The armed, an illustration of an International Judicature, ii. 552.
 Neville—M. Hyde de. Statement of, on the comparative numbers of naval and military officers in France and England, ix. 408.
 New Grenada—The document by which the study of Bentham's works was reintroduced in, x. 553.
 New Instruction System—Who the originators of, viii. 5.

New Jersey—The Penitentiary system as adopted in, iv. 213.
 New Lanark—The Establishment at, x. 476-477.
 New opinions—The vanity of a wish to promulgate, will not create, x. 145-146.
 New Shoreham—Case of, for corruption, i. 484.
 New South Wales. Breach of the constitution, and illegalities, in the Government of, as exposed in "A Plea for the Constitution," iv. 251-284. Preface—an Act passed, but not retrospective, 251-252. Scarcity of legislative provision, 254-253. Consequences—arbitrary acts, some good in themselves, others evil, 253-254. The power of legislation so necessary to be lodged somewhere on the foundation of a new colony here omitted—judicial power only given, 254-265. Division of the population into classes, for an examination of the incidence of the governor's power on each, 255-257. Over persons not of the convict class or in the service of the crown, could have no legal authority without further power by Act of Parliament, 257-258. Power of the crown to legislate by Charter, if it existed in the case of America, given up, 258-259. This power, when exercised, shown to have been illegal, 259-261. Charter cannot be applicable to a colony in existence, as it presumes gift and receipt, 261-263. If the laws of England be transported to the colony, the courts for putting them in force cannot also put in force the ordinances of the governor, which would therefore fall from non-execution, 263-265. Law officers of the crown not infallible—their mistakes in this department, 265-266. The decision in the Grenada case shows the governor's ordinances to be null—criticism on that case, 266-269. Governor's illegal ordinances for prevention of famine, 269-271. Attempts at the suppression of drunkenness, 271-272. Convicts whose sentences had expired, detained—avowedly from accidental circumstances, but design suspected, 272-275. These expirers kept in a state of bondage during the illegal detention, 275-276. Breaches of the Habeas Corpus Act, by illegal confinement beyond seas, 277-278. Coke's authority to show that it is an invasion of Magna Charta, 278-279. Transgression of Petition of Rights in proclamation of martial law, &c., 279-280. Breaches of Bill of Rights—dispensing power—arbitrary punishment—instituting courts without Parliamentary authority—levying taxes—legislation without election—illegal and cruel punishments, 280-282. Transgression of recent statutes, 282-284. How far it is

- safe in legislating for the future to let such transgressions pass unnoticed, *ib.*
- New South Wales—Illegal transportation to, and detention in—Letters to Dumont and to Charles Abbot on, xi. 127-134.
- — — Correspondence with Major Cartwright as to the unheard complaints of certain free settlers against the abuses in, x. 463-466.
- — — Estimate of its physical properties as a colony, x. 586.
- — — Character of the natives of, and its influence on the imported population, iv. 182.
- — — The Panopticon system shown to be preferable to transportation to, iv. 173-243. *See* Transportation.
- — — General remarks on transportation to, i. 491-497. *See* Transportation.
- — — Collins on, quoted. *See* Collins.
- New trial—Consideration as to the extension of the remedy of, on the ground of insufficient evidence, vii. 164.
- — — Motions for, animadverted on, vi. 104, 413, 416; vii. 166.
- — — Involves a preliminary motion-suit, v. 521.
- New York. The Penitentiary system, as adopted in, i. 503; iv. 213, 217, 236.
- — — The ballot, as practised in, iii. 559.
- — — Nature of the suffrage in, adduced in illustration, iii. 612.
- — — Plan for the instruction and moral improvement of the Irish labourers in, x. 500-503.
- Newark Herald—Pamphlet, called a Vindication of, quoted on the Packing of Special Juries, v. 102-104 n.
- Newcastle—Duke of, (the first) forced into war, ii. 559.
- — — (the first) noticed, x. 31.
- — — (the fourth)—Tyranny of, at elections, iv. 435 n.
- Newgate—Illustration of prison discipline from, i. 426.
- — — Defects in its position and construction, rendering it liable to attacks from mobs, iv. 106.
- Newspaper—Hints respecting the conducting of a, in a partially civilized state, viii. 581-583. Advertisements of sales, exhibitions, &c., 581. Accidents, *ib.* Offences—service due to public security, *ib.* Proceedings of courts, *ib.* Deaths—with periodical enumerations, if obtainable, *ib.* Births, 581-582. Comparative statistics, with a view to other States, 582. Reference of all public proceedings to the greatest-happiness principle, *ib.* Stock of foreign newspapers, *ib.* Education of youth as editors, *ib.* Stock of matter pre-arranged for trying which is the most interesting, 582-583.
- Newspapers—comparative estimate of those of Britain, France, and America, viii. 582.
- Newspapers—Advertisements in—Project for facilitating reference to, x. 322-323.
- — — The leading instruments of the Public-opinion Tribunal, viii. 565.
- — — The operations of, in respect to public opinion, compared with those of the ordinary judicatories, viii. 566-568.
- — — The power of, compared with that of the official judicatories, viii. 568-572.
- — — Proper qualifications of, viii. 580-581.
- — — Constancy, 580. Frequency, *ib.* Variety—admixture of politics with other matters, *ib.* Impartiality—consideration as to whether it would be practicable for a newspaper to have two editors, one on each side of the leading questions in politics, 580-581.
- — — Enlightening effects of, i. 568.
- — — Effect of suppression of—Removal of the protection which the Public-opinion Tribunal holds out to the poor—currency for private defamation, ix. 53-58.
- — — History of their acquiring the privilege of publishing Parliamentary debates, ii. 316.
- — — Accounts of important trials in, as affecting publicity and control, vi. 377.
- — — The influence of, proportioned to the frequency of their recurrence, xi. 18.
- Newton—Tribute to his merit as a philosopher, viii. 129.
- — — noticed, ii. 312; vi. 205; viii. 37, 105 n, 174, 177, 178; x. 588.
- Newton—Rev. R.—Opinion of, on University oaths, v. 195-196 n, 228.
- Nicaragua—Lake of. Plan for uniting the Atlantic and Pacific through, ii. 561-562.
- Nice—Visited by Bentham on his way to Russia, x. 150.
- Nicholas—The Emperor, noticed, ix. 133.
- Nickolls—Rev. R. B.—Letter from, to Bentham, x. 460.
- Nicolai of Berlin—The case of, vii. 105.
- Night attendance by judges—Provisions for in the Constitutional Code, ix. 541-542.
- Nisi prius—Number of witnesses cited to, compared with number examined, vii. 535 n.
- Nismes—visited by Bentham on his way to Russia, x. 150.
- Nitrous oxide gas—Letter from Dr Roget on the preparation of, x. 342-343.
- Nobility—Evil effects of a, iv. 432-441. A means of corruption in the hands of the monarch, 432-437. Honour and dignity, which form an excuse for obtaining public money, 437-441.
- — — Exemptions of, from punishment, ii. 196.
- — — Hereditary. Effect of, on the fund for rewarding services, ii. 201.
- — — Decayed. Principle that they should

- be supported by the state, combated, v. 305-307.
- Nobility—*See* Aristocracy : Lords : Peers.
- Nocturnal irruption as an aggravation of corporal injury, i. 165, 168.
- Nolumus leges Angliæ mutari*—Uses to which the expression is applied, vi. 148; vii. 298.
- NOMENCLATURE—New, necessary for new ideas, i. 49.
- Legal. Deficiencies of, i. 110 n *.
 - Legal. The importance of improving, and the prejudices arrayed against improvement, iii. 270-274.
 - Legal. The inaptness of, shown in Blackstone's commentary, i. 237-238.
 - Difficulty of assigning a, for instruments of procedure, ii. 25-27.
 - of political fallacies, ii. 382-383.
 - Creation and adaptation of, for the purposes of reference, ii. 382-383.
 - An apt, will be chosen by those having the general interest—a vague by those having their own sinister interest at heart, ii. 455-456.
 - Fallacious objections to, ii. 463-464.
 - Considerations as to, in relation to titles, iii. 189-190.
 - Official—Diversities of, iii. 196.
 - The received. Difficulties which the author had to overcome with regard to, in the View of a Complete Code, iii. 209.
 - characterized as classification, iii. 252.
 - Fixation of, in legislative acts, iii. 592-593.
 - The want of a fixed, causes dispute and litigation, v. 600.
 - The general advantages of, iii. 171 ; vi. 442.
 - as to wills—Inaptitude of the existing, in England, vi. 549-550.
 - Use of single words for, viii. 65 n *.
 - Difficulty of giving a definition of, when it happens to be in popular use, and the subject of debate, viii. 107.
 - Unapt. Preserved by adepts, who unwilling to give the uninitiated a simpler approach to their knowledge, viii. 183-184.
 - The Linnæan, examined, viii. 269-270.
 - Necessity of preserving uniformity in, in all discourse, viii. 315.
- Nomenclature and classification—Connexion between, ii. 382.
- — — Essay on, viii. 63-128; —
 - — — Plan of Essay on, viii. 63-64. Defects in English and other languages, ib.
 - Reason—not holding in view useful purposes, ib. Objections to inquiry on ground of abstruseness, answered, ib.
 - — — Properties desirable in a denomination given to a branch of art and science, with reference to ordinary and systematic purposes, viii. 64-66. Ordinary for single denomination of the subject

- systematic for a denomination to connect it with a system, 64-65. Qualifications applicable to both Purposes—clearness, &c., 65. Qualifications for systematic purposes to show relation with the others of the system, whether of identity or diversity, 65-66.
- Nomenclature and classification—Imperfections incident to the denominations adopted in, viii. 66-68. Unexpressiveness, or failure to convey so much as might be conveyed of the nature of the thing expressed, 66. Misexpression when it conveys a notion of something different, ib. Considerations as to how far usage may obviate such essential defects, ib. Always involve self-contradiction in discourse, and leave doubts as to the extent of the field covered, 66-67. Natural History and Natural Philosophy instances, in the difficulty which the young have in clearly comprehending their extent, 67. The obscurity created in the whole field of art and science by the defects, 67-68.
- — — Inaptitude of the appellatives Natural History, Natural Philosophy, and Mathematics, adduced in illustration of, viii. 68-70. (*See* these heads.)
 - — — Causes of the inaptitude of the expressions "Natural History," &c., viii. 70-71. Narrowness of the field when discoveries first made, and its later expansion, 70. Electricity and Magnetism instances, 70-71.
 - — — Course to be taken for framing the most perfect encyclopedical system of, practicable, viii. 71-73. As to the subjects an accurate but not minute knowledge requisite, 71. Method adopted, the exhaustive or bifurcate, 71-72. Though the extent to which this can be carried be small, it is so far a clear gain, 71. Language, the Greek, 72. The whole matter of the arts and sciences must be the field—D'Alembert sets out with science only, 72-73.
 - — — D'Alembert's Encyclopedical map an instance of imperfection in, viii. 73-82. *See* Encyclopedical.
 - — — Specimen of a new encyclopedical Sketch accompanying a table of, viii. 82-95. *See* Encyclopedical.
 - — — Explanations relative to the Encyclopedical Sketch and Table of, viii. 95-98.
 - — — Use of the synoptic encyclopedical Table of, viii. 98-100.
 - — — Application of Exhaustive or Bifurcate division to, viii. 101-126. *See* Bifurcate.
 - — — In what cases new names desirable and likely to be employed in, viii. 126-128.
- Nominees in the House of Commons—Position of, x. 235-237.

Nomography, or the art of inditing laws, iii. 231-283;—

- Nature of the subject stated—form, not substance of the laws, iii. 233.
- Relation of, to the government of a private family, iii. 233-234.
- Relation of, to Logic, iii. 234.
- Relation of, to the Pannomon or universal code, iii. 234-235.
- Relation of, to proposal and Petition in legislation, iii. 235.
- Relation of, to private Deontology, iii. 235.
- General observations on the end in view in, iii. 235-236.
- The general end of—Relative notoriety of the substance of the laws, iii. 236-237.
- The particular ends of—Methods of avoiding obstructions to notoriety, iii. 237-238.
- Imperfections of which it is susceptible, classified, iii. 238-239.
- Imperfections with reference to, iii. 239-241. Of the first order—ambiguity, 239-240. Obscurity and overbulkiness—absolute and relative, ib. Of the second order—Unsteadiness in expression, unsteadiness in import, Redundancy, Longwindedness, Entanglement, want of helps to intellection, Disorderliness, 240. Connexion between the two sets, 240-241.
- Depravity of the style of English statutes, as illustrating defects in, iii. 241-242.
- Uncognoscibility as a defect in, iii. 243-244.
- Ambiguity and obscurity as defects in, iii. 244-245.
- overbulkiness as a defect in, iii. 246-247.
- Unsteadiness in respect of expression and of import as defects in, iii. 247.
- Redundancy as a defect in, iii. 247-248.
- Longwindedness as a defect in, iii. 248-249.
- Complexity productive of entanglement in, iii. 249-250.
- Nakedness in respect of helps to intellection as a defect in, iii. 250-251. Illustration in the want of abbreviated references in English statutes, ib.
- Unapt arrangement and disorderly collocation as defects in, iii. 252-253.
- Remedies for ambiguity in, iii. 253-255. Cases unsusceptible, 253. Rules for avoiding miscollocation, 253-255.
- Remedies for overbulkiness in, iii. 255-259. Distribution into parts, 255. *Nil alienum*, ib. *Unicuique totum*, ib. *Nil prematurum*, 255-256. Way in which different persons may be affected by the same portion of law, with a view to letting each know his share, 256-258. Cases where a number jointly affected, 258-259. Modes of notification, 259.

Nomography—Necessity of attendance in, to the party served and the party burdened with observance, iii. 259. Former warrant for existence of the law—knowledge by latter the sanction of its obedience, ib.

- Rules for avoiding redundancy in, and obtaining steadiness and certainty, iii. 260-264. See Laws.
- Remedies for longwindedness in, by confining sentences to single propositions, &c., iii. 264-265.
- Helps to intellection in, iii. 265-268. Division and subdivision, with marks for reference, 265-266. Numbers as a means of designating the extent of subdivision, 266-267. Employment of substantives with auxiliaries, in preference to verbs, 267-268.
- Remedies for miscollocation in, iii. 268-269.
- The nature and derivation of, v. 270 n.

Nomothetic Government, or Government by Legislation—Position of, as a branch of Ethics in the Encyclopedical Sketch of Art and Science, viii. 94.

Non-demand of judicial interference from difficulty of obtaining it—a cause of injustice, vi. 30.

Non-disappointment principle—Definition of, and application to projected reforms, v. 266-267, 413-414, 419.

- — — in reference to expectation of change, iv. 527.
- — — See Disappointment-preventing principle.

Non-existence—The idea of, is that of absence extended, viii. 210.

Non-lawyers—Why the introduction to Rationale of Evidence appealed to, vi. 5-6.

Non liquet—No verdict expressive of, in England, ii. 157.

Non-notoriety of contracts, &c., an evil remedied by Preappointed evidence, vi. 511.

Non-penal procedure—View of the principal facts to which evidence applies in, vi. 215-216.

Non-redundance—a property desirable in a language, viii. 191.

Non-reeligibility clause—Opinion of, expressed in tract on the proposed Portuguese Constitution, viii. 483-485.

- — principle—Discussion with Dr Bowring on, x. 528-530.

Non-responsion, and false or evasive responsion, as evidence of delinquency, vii. 24-29.

Nonsense—more readily believed than facts simply improbable, vii. 111.

Nonsense psychology, nonsense ethics, nonsense pistentics, &c., compared to nonsense verses, vi. 239.

Nooscopic Pneumatology, or the Philosophy of the intellectual faculties—Position of,

in an Encyclopedical Sketch of Art and Science, viii. 88.

— — Division of, into Plasioscopic and Coenonesioscopic, viii. 90-91.

Norman French—Use of, in law, a device of the Technical system, v. 448-449.

— — Abolition of the use of, opposed by lawyers, v. 15.

Norman Kings—Alteration of the judicatories by the, ii. 151-152.

Normans—Felony introduced by the, i. 505.

North—Lord—Account of an overture made by, to the Rockingham party, x. 102-103.

— — Allusion to the position of the Ministry of, i. 251.

— — Casual notices of, v. 228, 299; x. 56, 62, 564.

North—Chief-Justice and Keeper, noticed, vii. 285 n.

North—Rev. John—Letter from, to Bentham, x. 416.

North—Hon. Roger—His account of the conflicts between King's Bench and Common Pleas, v. 493; vii. 382 n.

Northampton Tables of Mortality—The, noticed, viii. 410-411 n.

Norton—Sir Fletcher—His conduct to Wilkes, x. 45.

Norway—Allusion to the absence of an aristocracy in, viii. 467.

Nosology—Etymology of, and place in the Chrestomathic system of Instruction, viii. 36.

Notables—Assembly of, in France. Method of taking votes in, ii. 318.

Notarial authentication, vi. 523 n.

Notaries—Not so much Lawyers as Registrars, iv. 319.

— — Advantage of having, as witnesses to deeds, vi. 525-526.

— — Use of, for securing the propriety of a contract, vi. 526-529. To see that the executor be not legally incapacitated, that it be not injurious to his interest, that he knows what he is doing, that it be not illegal, 526-527. Operations—attestation, interrogation of the party, and notification of the law, 527-528. Contracts peculiarly calling for notification, 528-529.

— — Honorary—Proposed, vi. 529-530. Justices, clergymen, schoolmasters, &c., 530.

— — in France—The integrity of, as a class, with illustrations, v. 408.

Notation, as a security for trustworthiness of evidence, vi. 284.

Notation and recordation of testimony, vi. 408-419;—

— — Uses as applied to orally delivered testimony, vi. 408-410. Uses to judge, 409. To suitors as a security, 409-410. For purposes of appeal, ib.

— — in what cases to be employed, vi. 410-412. Division of causes into recorda-

tion-worthy and non-recordation-worthy, 410. Criterion of importance, 411. Permission to latter being recorded on party paying expense, ib. Cases having a peculiar claim, 412.

Notation and Recordation—How to be performed, vi. 412-414. Extent of minuteness, 412. Interrogations as well as answers, ib. Judge should record for his own use—instance, Judges' notes, 413. There should be an official short-hand writer, 414.

— — Practice of, in English law, vi. 414-415. Summary procedure before Justices, &c., 414. Regular procedure, 415. 2

— — Authentication in the case of, vi. 415-419. None required to Judge's notes for his own use, 415-416. Dangers to be obviated, 416. Methods for obviating, 416-419.

Note Annuities. Project for the conversion of Stock into, iii. 105-153.

— — Correspondence with Sir George Rose on, x. 359-361.

— — Correspondence and controversy with Vansittart and Dr Beeke as to the practicability and usefulness of, x. 364-373.

Notes—Whether they ought to be consultable in delivering testimony, vi. 31, 386-392. Cases in which chiefly required—complexity, figures, length of narrative, &c., 386-387. Directions for regulating the privilege, 387. Matters that should be inquired into as to the origin and history of the document, 388. Notes without interrogation would be on a par with affidavit evidence, 389. Illustrations cited from English practice; Extracts from a book refused as evidence, 389-390. Criticism on the case, 391-392.

— — Judges'—Authority of, in evidence, vi. 413, 415.

— — All persons should be free to take, of evidence, vi. 356.

— — Reasons for giving the substance of Chrestomathia in the form of, viii. 7.

— — to legislative enactments—Reasons for, iii. 323.

Notes—Bank. Reasons why they circulate on less advantageous terms than Exchequer Bills, iii. 149-153.

— — See Paper Money.

Note-taking as a test of intellection in education, viii. 45.

— — as a branch of the Chrestomathic system of Instruction, viii. 40, 51.

— — as a means of publicity in Courts of Justice, vi. 354.

Notice in Litigations—Chicaneries about, presented as a grievance in Petition for justice, v. 524.

— — Chicaneis about, examined in the Rationale of Evidence, vii. 249-255. Analysis of the different kinds adopted in practice, 249-250. Method proposed for ob-

- viating**, by preliminary meeting, &c., 250.
Held received when it has not been, and not received when it has, in practice, 250-252.
- Notice**—Employment of letter-post for the purpose of, iii. 378, 379.
- Security for the means of communicating, in proposed Dispatch Court, iii. 418-419.
 - made in English practice in such a manner as not to be received by the party, iii. 419 n.
 - in English practice, worded so as to be incapable of being obeyed, vii. 417-418.
 - Sham, in English practice, vii. 53 n.
 - The kind called *Destringas*—Delays occasioned by, vii. 221.
- Notification**—The subjects of, with reference to creating securities against misrule through the Public-opinion Tribunal, viii. 572-573. Ordinances, transgressions, and suffrages, ib.
- Means of, with respect to ordinances, viii. 573-575.
 - as to transgressions—Utility of, and obstacles to, viii. 577-579.
 - as to suffrages: newspapers, letter-post, &c., 579-583.
 - of laws to those interested—Modes of, iii. 259.
 - for the purposes of preappointed evidence, vi. 512.
- Notoriety**—The general end of the art of inditing laws, iii. 237-238.
- of a fact, is evidence admitted to be complete in English practice, vi. 277-278.
- Nôtre Dame**—Illustration of French law, in a charge of stealing the bell of, vii. 52 n.
- Nottingham**—Lord, noticed, vi. 534 n.
- Nouailles**—Peter—a French refugee, and acquaintance of Bentham, x. 53.
- Nouns**—whether prior or posterior to verbs in the order of abstraction, viii. 326.
- conjugate, a preferable word to decline, for expressing the modifications of, viii. 323-324.
 - Irregular—Fragments of language anterior to the use of systematic inflection, viii. 327.
 - Substantive—an exhaustive division of, to be found in the names of real and fictitious entities, viii. 119.
 - Substantive, with auxiliaries—Employment of, in legislation, in preference to verbs, iii. 267-268.
 - Substantive, as a department of grammar, viii. 345-347. Name of an entity real or fictitious, 345. Cases—for expression of relation between it and other entities, 345-346. (*See Case*.) Gender—an encumbrance in common names, 346-347.
 - Number—necessary to have signs for it, but simplicity a desideratum, 347.
- Nouns**—Verbal. Preferred to verbs as more distinct, viii. 315-316.
- Novelty** as an argument against a measure
- Fallacy of, ii. 410-411.
 - A fallacy urged against improvement, v. 417.
- Nuisance**—Character of the offence of, i. 369.
- Nullification** the main instrument of decisions not on the merits, v. 477.
- Principle of, in judicial procedure, vii. 255-260. Either on plaintiff's or defendant's side—generally latter, 255-256. Evils enumerated, 256. Uncertainty of the law, *ex post facto* law, punishment misplaced, pardon misplaced, ib. Decisions upon and not upon the merits, 257. Quibbles, 257-258. Arbitrary power to judges to be strict or lax as they think fit, 258-259. Weak enforcement of penal law, ib. Amelioration of it urged as a substitute, 260.
 - Statute law contemned in the practice of, vii. 313.
 - What involved in, vi. 65 n*.
 - of contracts because they are not committed to writing, vi. 128-134. *See Exclusion of Evidence*.
 - of informal contracts, vi. 65, 84, 517-521. *See Formalities*.
 - of evidence gives impunity to mendacity, vi. 26.
 - Bad evidence made conclusive by, vi. 24.
 - in the case of informal documents superadded to formal, vi. 134-135.
 - of deeds for want of formalities—Punishes innocent employer and gives culpable lawyer new litigation, v. 409-410; vii. 261-262.
- Nullity of contracts**—Proper causes of, i. 331-333.
- Number in grammar**—Nature of the proposition involved in the form in which it is expressed, viii. 190.
- in substantives—an expression necessary for, but simplicity a desideratum, viii. 347.
 - in the grammar of verbs—Meaning of the term, viii. 349.
 - Sciences involving the predicament of, viii. 287-288.
 - of witnesses—Effect of, on probative force, vi. 221.
- Numbers**—Arithmetical. Utility of, as a means of reference, iii. 250.
- Use of, in facilitating reference to parts of documents, v. 442-443.
 - Propriety of putting in words instead of figures, on important occasions, vi. 536.
- Numeration of paragraphs**—Advantages of, in written evidence, vi. 441-443, 485.
- Nuncupative will**—Statute of frauds as to, vi. 545-547.

Nundecomar—Illustration from the fate of, i. 187.

Nuñez—Don Toribio. Letter of, to the author, on codification, iv. 572-573.

— — — His analytical view of Bentham's opinions, viii. 466, 544.

— — — publishes in Spain, *The Spirit of Bentham*, xi. 19.

Nuremberg Chronicle, quoted, vii. 89, 98, 100.

O

Oates—Titus, the nature of the crimes of, characterized, iv. 281.

— — — The perjuries of, an illustration of an epidemic destroying the faculty of discovering truth in the public mind, vii. 117 n.

OATH—A security equivalent to the intention of, should be exacted from all litigants making statements, v. 11.

— before arrest in mesne process—Futility of, ii. 110.

Oaths—The needlessness and mischievousness, as well as anti-christianity, of, exposed in "Swear not at all," v. 187-229.

— Enactments as to, subsequent to the publication of "Swear not at all," v. 189.

— Incongruity of the assumption on which benefits of, founded, v. 191-193. Ceremony described, 191. The assertory oath falsely distinguished from the promissory, 191-192. Predicates authority over the Almighty to put the adjuration in force through the instrumentality of the mere ceremony, 192. Punishment would be the same for mendacity, or else the Almighty increases it at the bidding of man, 193. Absurdity illustrated in different persons taking oaths of opposite tendency, ib.

— Mischievousness of the instrument in a general point of view, v. 193-195. Theory, that bad oaths are null, is only the feeling of the person who expresses it—held binding by those who take them, ib.

— Insufficiency of, as a security against incorrectness and incompleteness in evidence, v. 195-197. Custom-house and university oaths, 195. Oxford, ib. No inference that the same persons who break these oaths would give false testimony—only shows that the oath *per se* nothing, 196-197.

— Recognition of the inutility of, in Parliamentary practice, v. 197.

— Mischief of, in contributing to the mendacity-license granted by judges, v. 197-200. As only in this shape that mendacity punished, held licensed in all other shapes, ib.

Oaths—Their tendency to weaken the efficiency of the laws, v. 201-204. Putting exclusion on some of the best classes of evidence—Quakers, &c., 201-202. Either encumber acts as to new offences, or omitted render them null, 202. Inconveniences where left to arbitrament of judge, ib. Not sanctioned by the Arbitration Act, 203-204.

— Consciences of jurymen bewildered and enslaved by, v. 204-205. Obligated to adopt the interpretation of the judge, who thus exercises a sort of priestcraft, ib.

— Force given by, to the enterprises of malefactors by affording them a bond of union, v. 205-206.

— Excuses for abuse of prerogative by the Monarch found in, v. 206-207.

— Use of, as an instrument for preventing improvement, exhibited in Coronation oath, v. 207-209.

— Oxford University—their tendency to corrupt national morals and understanding, v. 209-212. Assumption of infallibility, 209-210. Comparison with Church of Rome, 210. Laud's explanation that the oath only infers submission to the law, is the principle that a crime is not wrong when it is punished, 211-212.

— Cambridge University—their evil tendency, v. 213-219. Different from Oxford in having an explanation, which proves doubts of the system to have existed, 213-214. Historical reasons of the difference, 214-215. Freedom from perjury not part of the religious freedom of the institutions, 216. Though not nominally insisted on, not the less virtually, 216-217. At Cambridge where there are misgivings, custom and the peace of the Church the apologies, 216-218. Considerations as to the admitted distinction between the binding force of judicial and university oaths, 218-219.

— Judicial, shown from scriptural authority to be forbidden by the religion of Jesus, v. 219-220.

— The argument against, as pursued in the Petition for justice, v. 454-467, 533-534. Instrument by which mendacity is accomplished in judicature, 454-455. Needlessness as evinced in examinations by House of Commons, 455. Quakers and persons personating Quakers, 456. Inefficiency of the ceremony, Irish Bishops, Oxford, Custom-house, ib. Mischievousness—escape of criminals against whom persons will not take oath, 456-457. Repugnance to natural religion, 457-458. Utility to judges, 458. Invests them with power of converting wrong into right, and right into wrong, 458-459. Atheists invested with pardon-power, 459. Mendacity should be punished in all cases,

whether accompanied by oath or not, 460. Petitioners pray to be put on the same footing as Quakers, and not to be bound to infringe the directions of Scripture or commit perjury on juries, 461. The putting an oath to men to declare their conscientious conviction, and then torturing them till they all declare it one way, 461-463. How men of resolution and desperate fortune may turn the verdict as they please, 463-464. Weakens the religious sanction, 464. Those who hold out, though avoiding perjury themselves, drive others to it, 464-465. In the way of frustration useful in the case of severe political laws, 465-467.

Oaths—Succedanea to, in punishments for the degrees of mischievous falsehood, v. 220-221.

— Cause and origin of the practice in regard to, v. 221-224. Perhaps of use in a barbarous age, 221. Restraining influence of priestcraft on barbarism, 222. Jephthah's vow, and the influence of it in the hands of Jewish priestcraft, 222-223. The power of dispensation assumed by the Church, with its services to priestcraft, 223-224.

— The arguments against, generally stated, i. 567.

— Abridgment of the argument as to the needlessness, mischievousness, and unchristianity of, with relation to witnesses and jurors, and in the case of official promissory oaths—in abridged Petition for justice, v. 513-516.

— constitute an excuse for not acting according to conscience, ii. 117-118 n.

— Inefficacy of, exhibited in conduct of juries and coroner's inquests, ii. 40-42.

— Illustration of escape of criminals from the law as to, v. 543.

— Origin of the administration of, vii. 265.

— Historical inquiry as to commencement of the practice of tendering, vii. 460-462.

— Breach of—The mischief of perjury does not consist in, vii. 406-407.

— Use of, as a security for the trustworthiness of evidence, examined in the Rationale of Evidence, vi. 28-29, 284, 308-325;—

— Nature of, vi. 308-309.

— Inefficiency of, as a security for trustworthiness, vi. 309-315. Profess to put the Almighty at the command of man, 309-310. Uselessness to justice exemplified by the ease with which feelings of humanity neutralize them, 311. Not required in House of Commons, 312-313. Punishment instead of oath to obviate false claims for money at Government offices, vi. 313. Perjury an essential of English Jury-trial, 314-315.

— Mischievousness of the system of, vi. 315-318. Efficacious for bad but not for

good foundation of mendacity-license, 316. Crimes may be committed in presence of Quakers and others who refuse to swear, ib. Stand in the way of self-criminative, and compel recourse to inferior evidence, 317. Origin in a barbarous state of society, 318.

Oaths—How to adapt the ceremony of, in the best manner to its intended purposes, vi. 318-321. Carries operation of three sanctions—religious, political, and moral, 318-319. Arrangements for pointing the force of the religious sanction, 319. Of the political, 320. Of the moral, 321.

— as a security under past and present systems of judicature, vi. 321-325. Afford certificate of veracity to liars, 322. Roman law—*juramentum expurgatorium*, *juramentum supplicatorium*, oath of calumny, 322-323. English form before a jury. Defects of it, 323. Danish law, 323-324. Hindoo, 324. Swedish, ib.

— If employed in other cases, should they in examination of defendant *in penali*? vi. 325. Should be tendered at all events, ib.

— Alterations in the laws regarding, vi. 325 n.

— Mendacity never punished without, in English practice, vi. 294. The criminality thus transferred from the deception to the ceremony, ib.

— Administration of, in Ecclesiastical Courts checked, vii. 458-459.

— Administration of, to infants, vii. 428-429.

— exclude the testimony of those who will not go through the ceremony, vi. 115, 295; vii. 424 n. ||.

— Practice of administering, to parties, once in use, vii. 460.

— Witnesses should pronounce—not merely hear, vi. 321.

— abolished in voluntary affidavits, vi. 304 n. In other cases, 381 n.⁶.

— Bill relaxing the laws as to, thrown out, vi. 381 n.⁶.

— of credence or sincerity, by litigants founding on makeshift evidence, vii. 162-164.

— The application of the term to profane interjections of anger, iv. 140.

— Expurgatory of the Romans—their nature, vii. 70-71.

— in supplement—their nature, vii. 71.

— Casual remarks on, iii. 566 n, 577 n, 590 n.

Oath—The Coronation—intended to bind the monarch in his Executive, not his Legislative capacity, ii. 408-409.

Oath of Office for Judges, and Pursuers and Defenders General, in Plan of Judicial Establishment for France, iv. 356-357.

— — — Opinion as to, expressed in Plan

- of Judicial Establishment for France, iv. 381-384. Should not be used where the law suffices, 381. Nor for light matters, 382. Nor for ordinances unavoidably to be infringed, ib. Should not be so general as to be nugatory, ib. Purpose—employing the joint aid of the moral and religious sanctions to assist the political, ib. Use as a protection to a public man from the sinister influence of individuals, 383. Should be such as all religious persuasions can take, and therefore should not express religious opinion, 383-384. Should never be employed but in subservience to conscience, 384.
- Oaths**—Promissory. The assistance they give to abuse, and arbitrary power, ii. 408-410.
- — A form by which inducements offered to mendacity, iii. 278-279.
- Oaths**—University—Perjury taught by, ii. 210.
- — an illustration of the feebleness of the religious sanction in favour of truth, vi. 274.
 - — Bentham not required to take, x. 36.
- Oaths and Witnesses**—Lord Ordinary on, in Scotland—Duties of the, v. 23, 38.
- Obduracy, Implacability, &c.**, as designative of motives, i. 203.
- Obedience**—Habit of, the foundation of Government, i. 263-264; iii. 219. Extent of, shows that to which Government operates, ib.
- Nature of a habit of, i. 263-264 n.
 - Habit of, not dependent on the character of the administrators of the law, ii. 423-424, 427.
 - Habit of, the sole extent to which acts of sovereignty can be said to issue from the people, ii. 504-505.
 - to Government—a matter for individual calculation, iii. 219.
 - to the law—Source of the disposition towards, vii. 330.
 - Subtraction of, and thence of power—the consequence of condemnation of rulers by the Public-opinion Tribunal, viii. 562.
 - clause directing, in the French Declaration of Rights, criticised, ii. 511.
- Object**—a fictitious entity, viii. 205.
- involves an idea of motion on the part of some other body, viii. 205.
 - and subject—Relation of, to each other, viii. 205.
- Objects**—Sensible. Definition of, viii. 44.
- Obligation**—Exposition of the term, with reference to the Pannomion or Universal Code, iii. 217.
- Erroneous supposition of, as invalidating contracts, i. 331-332.
 - Use of viewing, as the counterpart of right, iii. 293.
- Obligation**—a term requiring special exposition, v. 413.
- as the root of Political and Quasi-Political fictitious entities, viii. 206.
 - The use made of the term, an illustration of paraphrasis, or the fixation of fictitious entities through real, viii. 247-248.
 - Legal—Risk of subjection to, not a ground for excluding testimony, vii. 463.
- Obligations** as the converse of powers, i. 106 n, 338.
- as the counterparts of rights, i. 301-302.
 - as the counterpart of rights—Analysis of, in the Introduction to the Constitutions¹ Code, ix. 18-19.
 - as the counterpart of rights, in relation to judicial procedure, ii. 16-17.
 - regarding services, examined, i. 338-341.
 - attached to different private conditions, i. 343-358.
 - Performance of—how far it should be absolute, ii. 224.
 - Offences, rights, and services—Relation of the laws concerning, iii. 158-160.
 - as a general title of the Civil Code, iii. 180-181.
 - Necessity of making the law patent to parties liable to, iii. 195.
- Oblivion**—Circumstances in which statement of, suspicious, vi. 449.
- Application of preappointed evidence to prevention of, vi. 513.
 - Securing facts from, by registration, vi. 79-80.
- Obscene Exhibitions**—as an offence. Position of, in the Penal Code, iii. 168.
- Obscenity**—Variableness in national notions of, i. 176.
- Obscurity**—as a defect in the drawing of laws, iii. 239, 244-245.
- in language as distinct from ambiguity, viii. 304-305, 308-309.
 - in language—Rules for avoidance of, in so far as respects words taken separately, viii. 313-316.
- Obsequiousness** to people in power—a secondary effect of corruption, ix. 65-66.
- Observation**—Nature of, as one of the human faculties, viii. 75 n.
- Observations on Mr Secretary Peel's House of Commons speech, introducing his Police Magistrates' Salary-raising Bill*, v. 328-348.
- Observations on the Poor Bill introduced by the Right Honourable William Pitt*, viii. 440-461.
- Obstacles**—The confounding of, with causes, a fallacy employed in the support of abuses, ii. 466-469.
- Obstructions to suits.** Method of dealing with, ii. 82.
- O'Byrne**—an acquaintance of Bentham, noticed, x. 564.

Occupant—First—Nature of the title of, i. 327.

Occupation (or employment)—Meaning of, defined, i. 438.

— Habitual, as a circumstance influencing sensibility, i. 25.

— Evil of making a thoughtless choice of, for children, viii. 12.

Occupation (or occupancy)—Nature of the right of, iii. 182-183. Limitations—as to substance, 182-183; use, 183; time, ib.; place, ib.; right of interdiction by another, ib.; necessity of concurrence of others, ib.;

co-fights, ib.

— Wrongful, as an offence, i. 117-118.

Occupations—Sedentary and Active—Their opposite effects on the mind and body in respect to the will and capacity for acts of violence, iv. 142.

— Rules for the alternation of, in Pauper management, viii. 396.

Ocean—Arrogation by Britain of dominion over the, iii. 584 n.

O'Connell—Daniel. His approval of the Petition for justice, v. 439.

— — Professes himself a follower of Bentham, x. 594.

— — Letters to, on Law Reform, and requesting a personal visit to discuss it, x. 594-597, 599-600.

— — Letters from, x. 597, 602-603; xi. 15-16, 20, 29.

— — Letters to, on the difference between Whig and Radical Reform, x. 598-601.

— — Letter reprimanding his vituperation of Hunt, x. 602.

— — Miscellaneous Letters to, x. 603-605; xi. 12, 20-21, 27-29, 30, 32-33, 37-38, 62-63.

— — Anonymous letter recommending Hunt to give up his acrimonious attacks on, xi. 5-7.

— — His duel with Mr D'Esterre, xi. 13, 14.

— — Letter from. Account of his amusements—Wyse's History of the Catholic Association—Preachers of Law Reform—Bolivar and the state of South America, &c., xi. 21-23.

— — Anonymous letter to, on the subject of his practice of personal attack, xi. 25-26.

— — Letter of, to C. S. Cullen, on Law Reform, xi. 34-35.

— — Conversion of, to the opinion against second Legislative Chambers, xi. 60-61.

— — Gives notice of a motion for codification, xi. 50.

O'Connor—Arthur—Account of, xi. 3.

Offence—Creation of an, by the law, i. 151.

— Principles tending to the avoidance of, in conversation, x. 518-519.

Offences—Classification of, i. 96-142. Nothing should be an offence which is not

VOL. XI.

detrimental to the community, 96-97.

1st Class—Private, 97. 2d, Semi-public, 97-98. 3d, Self-regarding, 98. 4th, Public. 5th, Multiform or heterogeneous; by falsehood, and against trust, ib. Amendment of this classification, ib. n. Subdivision, 99-113. Genera of Class 1, (and in Notes of class 2 and 3), 113-137. (See Private Offences.) Advantages of the method, 137-139. Characters of Private Offences, 139-140; of Semi-public, 140; of Self-regarding, 140-141; of Public, 141; of Multiform, 141-142.

Offences—Division of, iii. 163-164. Private, Self-regarding, Semi-public, and Public, ib.

— Private—Subdivision of, iii. 164-165.

Against the person, 164. Against reputation or honour, 164-165. Against the person and reputation, 165. Against property, 165-166. Against person and property, 166. Against condition, 166-167.

— Private—Characters of, iii. 172-173.

— Self-regarding—Subdivision of, iii. 167-168. Against the person, 167. Against reputation, 168. Against reputation and person, ib. Against property, ib. Against person and property, ib. Against condition, ib.

— Self-regarding—Characters of, iii. 173.

— Semi-public—Subdivision of, iii. 168-169.

Against the person, 168. Against reputation, ib. Against person and reputation, ib. Against property, ib. Against person and property, 168-169. Against condition, 169.

— Semi-public—Characters of, iii. 173.

— Public—Subdivision of, iii. 169-171.

Against external security, 169. Against justice, ib. Against the Police, ib. Against the Public force, 169-170. Against the National wealth, 170. Against the Public treasure, ib. Against population, ib. Against the sovereignty, ib. Against Religion—Atheism—Blasphemy—Profanation, 170-171.

— Public—Characters of, iii. 173-174.

— Advantages of the Author's classification of, and general principles of classification, iii. 171-174.

— Divisions and Subdivisions of, i. 99-113.

• Division of 1st class—Private offences, 99-100. (See Private.) Of second class, 100. (See Semi-public.) 3d Class, 100-101. 4th Class, 101-104. (See Public.) 5th Class, 104-113. (See Falsehood; Trust.)

— Positive and negative. Difference in the objects of punishment as applied to, i. 392-395.

— Uses of the Author's divisions of, iii. 294-295.

— divided by English law into burnable and unburnable, vii. 434.

— distinguished by the extent of their mischievousness, i. 237.

R *

Offences—Division of the Remedies against, i. 367.

— and Punishments—Proportion between, i. 86-91.

— and Punishments—Analogy between, i. 407-409.

— The evils of, as compared with those of Punishment, i. 395.

— Direct methods of preventing, i. 367-368.

— Indirect methods of preventing, i. 533-580.

— Prevention of, by giving many persons an interest to prevent them, i. 556.

— Influence of Time and Place on the mischievousness of various kinds of, i. 172-177.

— Satisfaction to sufferers by, i. 371-388. *See* Satisfaction.

— Incapacitation for, not accomplished by the Transportation system, iv. 183-199.

— Relation of the laws affecting, to those concerning rights, obligations, and duties, iii. 158-160.

— Atrocity of, how far ground for incredibility, vii. 115-117.

— Advantage of having them notified and published, and the impediments to their being so, in fear, indolence, and poverty, viii. 577-579.

— against honour, Remedies for, i. 381-382.

— Chronic, or those that admit of suppressive remedies, i. 368-369.

— Suppressive remedies for, i. 369-370.

— National—defined, ii. 539.

— Classes of, to be pursued by Government Advocate, according to Constitutional Code, ix. 570.

Offender—The situation of, as a circumstance influencing the degree of alarm caused by crime, i. 76.

Offenders—Means of checking the operations of, i. 396.

— Habitual. Method of suppressing, through the instrumentality of the Poor-law, viii. 403-406.

— Punishment of. *See* Punishment.

Office—Patronage of, and Power of Removal from, should be in distinct hands, v. 426.

— Vacation of seat on acceptance of—Arrangements for, and existing practice regarding, iii. 589-591.

— Patronage of. How far equivalent to possession, iii. 339-340.

— Patronage of, in practice, equivalent to so much Salary, v. 352.

— Patronage of, when spoken of as of value to the owner, its abuse predicated, v. 570.

— Community of interest between those holding and those expecting, ii. 483.

— Sarcastic notice of the indifference pretended by the expectants of, v. 286.

Office copies—The clumsy and expensive system of demanding, in English Practice, vii. 169-170.

Office-holders—Plan for making the salaries of, public, v. 385.

— Opinion that money the only incitement to, combated, v. 313-316.

— The claim of, to establish fortunes as their remuneration, controverted, v. 292-294, 308-310.

— A modification of the law of libel proposed in regard to, as compared with private citizens, viii. 510.

Office—Oaths of. Opinions as to, expressed in the Plan of a Judicial Establishment for France, iv. 381-384.

— Argument for the inefficiency of, abridged, v. 514-515.

— *See* Oath.

Offices—Rewards with respect to, considered at length, ii. 235-252.

— Salary of. How far reward, ii. 235-237.

— Rules as to the emoluments of, ii. 237-240. Union of interest and duty—payment according to attendance, &c., 237-239. Emoluments measured by the success which attends the service, 239-240.

— No fees or perquisites in, ii. 241.

— Minimize salaries of, ii. 241-242.

— Nominal salaries of, should not be greater than real, ii. 242-243.

— Burthen of, should be borne in the quarter where the benefit reaped, ii. 243-244.

— Emoluments of, should be on a scale likely to exclude corruption, ii. 244-245.

— Pensions of Retreat to holders of, ii. 245-246.

— Sale of, ii. 246-248.

— Qualifications with reference to holders of, ii. 248-249.

— Principles to be followed in reforms of, ii. 251-252.

— Letter on the advantages from disposing of, by pecuniary competition, with reference to the election of a Secondary by the Common Council of London, xi. 31-32.

— The equality of eligibility for, as stated in the French Declaration of Rights, considered, ii. 509.

— Onerous. Distribution of, ii. 207.

— Objections to useful, on the ground of economy, influence of the crown, jobbing, &c., ii. 472-473.

— Compensation on the abolition of, i. 320-321.

— Public. The bidding for men of talent to fill, by offering large remuneration, considered, v. 310-313.

— Public. How far they can be conferred as rewards, ii. 195.

— Public. Architectural arrangements for, tending to facilitate despatch, secure the requisite secrecy or publicity, and otherwise tend to the right performance of the

duties, ix. 325-333. *See* Ministers Collectively—Architectural Arrangements. Offices for conservation of transcripts of contracts, vi. 575-582. *See* Registration; Transcriptions.

— Appointments to, and removals from, a subject for registration, vi. 567.

— Judicial—Needless and useless, created in England, vii. 306-307.

— Sale of—Chief-justices of King's Bench and Common Pleas, exempt from penalties against, v. 94 n.

— Unsalariated. Burke's opinions against, controverted, v. 294-297.

— Denial of good, and performance of ill, as punishments of the Moral Sanction, i. 454-455.

Officers of the Crown, &c.—Attendance of, in House of Commons without votes, iii. 490-495.

— Executive of Courts of Justice—Functions of, as exhibited in those of the Prehensors of the proposed Dispatch Court, iii. 376-381.

— Judicial. None should be paid by fees, iii. 339-340. *See* Fee.

— Law, of the Crown. The system of treating their opinion as if they were infallible, iv. 265-266.

— of the law—Effect of inconvenience to, in delaying justice, vi. 92.

Officers—Public. Cases in which they are interested unmeet for judicial privacy, vi. 369-372.

— Unpaid, and too respectable for suspicion—Danger of peculation in the case of, illustrated, iv. 130.

— Burke's reform in the payment of, ii. 198.

— Arrogating peculiar probity, ii. 412.

— Clause in the French Declaration of Rights for procuring an account of their administration from, ii. 519-520.

— Utility of having their remuneration so arranged as to give them an interest in their duty, iv. 129-130.

— Extravagant salaries tend to make idle, iv. 372-374.

— Fallacy of acting on presumptions of the probity of, ii. 412-413.

— affected by reforms—Compensation to, iii. 325-326.

Officers—Military—Divided into ordinary and erudite, ix. 350.

— The various grades of, in Britain, and in America, ix. 350.

— Method of appointing, and considerations as to the expediency of requiring a certain period of service in the ranks in the case of, ix. 351-352.

— in the British army—Number of grades, and high pay of, ix. 230.

Official aptitude—Appropriate, as a means of obtaining the ends of the Constitutional Code, ii. 272-274.

Official aptitude maximized—Expense minimized, v. 263-386.

— Preface to, v. 265-271.

— Introductory view of, v. 271-278.

Official arrogance—how covered by a veil of modesty, ii. 411.

Official depredation—Securities against, applicable to a Mahomedan state, viii. 591-592.

— Nature of, as a species of oppression, viii. 560.

Official dignity—Fallacy that large salaries necessary for the support of, v. 316-318.

Official evidence—received without interrogation and other securities, vi. 335, 460.

— Public offices as repositories of, vi. 553-561. Nature of the deposit, 553-554.

Uses—direct, and collateral or indirect, 554-555. Collateral called judicial use, 555. Exemplification, ib. Sources of

trustworthiness—responsibility and impartiality, 556. Responsibility only effectual if it has the sanction of punishment, 557. Absence of responsibility in public boards, 557-559. Rules for estimating and securing trustworthiness, 559-561.

— as furnished by judicial offices, vi. 561-566. Registration of instruments and operations in causes, 561. Use to parties in respect to suit in hand, 562. Use to future contingent parties, ib. Use to the legislature in the supply of statistics, 562-564. Neglect of this kind of evidence by English judges and legislators, 564-566.

— Publicity with relation to, vi. 27.

— Preappointed, vi. 72-79. *See* Preappointed.

— Written—Modes of authentication in the case of, vii. 180-181, 195.

Official incomes—Views as to the insufficiency of, controverted, v. 307-308.

Official inspection—Authentication by, vii. 178.

Official malefactors—Safety of the government used as an argument for screening, ii. 421-429. Punishes virtue and rewards vice, 421-422. Would impede all reform, 422-423. Illustrations from private transactions, 423. Habit of obedience not dependent on the character of those who administer the law, 423-424. The poor have an interest in the continuance of government, 424. No good government can exist without the exposure, ib. Influence of public opinion, ib. Procurement of respect, not in virtue of power, but of the excellence of the exercise of it, 424-425. Impossible to avoid unjust attacks, but generally defeated, 425-426. Ability of officials to defend themselves, 426-427. Good effects of habit of scrutiny, 427. Operation of the British constitution has little dependence on the conduct of officials, ib. Petitions for Parliamentary re-

- form, as tending to lower the institution in the eyes of the people, 427-428. The objection answered, 428-429.
- Official men**—Proposal for rules applicable to the conduct and deportment of, to enable the Public-opinion Tribunal to judge of them, ix. 42-43.
- — Security against, a leading end of the Constitutional Code, ii. 270-271.
- — Evil of giving them any legal protection which is not extended to the citizens at large, viii. 522-523.
- — The censure of the public one of the incidents of office, which they are paid for enduring, ix. 159.
- — Provisions with respect to, in the Constitutional Code, ix. 213-333. *See* Ministers Collectively.
- — Discovery of their unfitness interpreted to be libel, v. 108-109.
- — Their means of preserving themselves from attacks by private individuals, ii. 279-280.
- Official nomenclature**—Diversities of, in different nations, iii. 196.
- Official rank**—Right to, with relation to forfeiture as a punishment, i. 452.
- Official rights**—Publication of account of, recommended, i. 534.
- Officially-informative function of Ministers**, by the Constitutional Code, ix. 260-263. *See* Ministers.
- Old age**. *See* Superannuation.
- Onerous public duties**—Distribution of, ii. 207.
- Onis**—Spanish Envoy to the United States—An action for libel raised by, x. 512.
- Onomastic signature** distinguished from symbolic, vi. 515.
- Onslow**—Captain—a visiter at Bowood, x. 106-107.
- Onslow**—Speaker—Authentication of a portrait of Milton possessed by, x. 51-52.
- Ontology**, or the science of Being—Nature of, and place at the root of a division of the Arts and Sciences, viii. 83.
- — Fragment on, viii. 193-211. *See* Entities.
- — Definition of the term, viii. 195.
- — Introductory notice to Fragment on, viii. 192.
- — divided in the Encyclopedical Sketch into Coenoscopic and Idioscopic, viii. 83-84.
- — False use of the word in Philosophical language, viii. 83.
- Onus probandi**. *See* Burden of proof.
- Open and secret voting in Legislative Assemblies**, considered, ii. 367-370.
- Operation**—two appellations necessary to give an idea of—The operator, and the thing operated upon, iii. 382 n.
- — Judicial—List of, ii. 24-25.
- — Judicial—Effect of fixing times for, ii. 31-32.
- Operative**—Supreme. Exposition of the principles applicable to, in the Constitutional Code, ix. 127-141;—
- Operative**—Supreme. Appointment of, in the People, ix. 127-128. Distinguished from constitutive power, as that which calls for obedience, 127. Should be in the people's friends, not their enemies—monarchs and aristocracies necessarily enemies, ib. No trust to be placed in the intellectual or moral aptitude of those whose interest is not kept the same as the universal interest, 128.
- — The monarchical form of, described, ix. 128-134. The monarch taught to consider the people mere instruments of his gratification, instead of devoting himself to their happiness, 128-129. People behold in such a person their enemy, 129; and feel other monarchs their enemies; for though there be war between monarchs, it is rivalry not enmity, and the people are the victims, 129-130. Instead of the top, placed at the lowest scale of moral worth, being independent of inducements to do good, 130. So as to intellectual aptitude—virgineous education, 130-131. Never taught the greatest-happiness principle, 131. Illustration of the absurdity of the superhuman qualities attributed to monarchs, in the number that have been insane, 131-132. Slave-holders on a large scale, 132. Expense to a nation in palaces and baubles, ib. Perpetual dread of enmity and treachery, 132-133. Demoralisation by the virtues attributed to monarchs in defiance of fact, 133. Extent to which a benevolent monarch may do good, ib. An aristocracy adds to the evil, 133-134. Legislation of the state filled with severe laws for protection of the monarch and the system, 134. Historical origin of monarchy, ib.
- — Corporeal and incorporeal instruments of monarchy as the, ix. 134-136. *See* Monarchy.
- — Interests at work in the monarchical form of, ix. 136-138. *See* Monarchy.
- — Causes of misrule in the monarchical form of, ix. 138-139. *See* Monarchy.
- — Inaptitude of mixed monarchy as a form of, ix. 139-141. *See* Monarchy.
- Opinative Decree**—when granted, ii. 91.
- Opinion**—Meaning of the term, vi. 229.
- — Declarations of, may be bought to any absurdity, because cannot be disproved, vi. 557.
- — None so absurd as not to be swallowed, if it is believed that others have done so, ii. 481.
- — Impossibility of proving, by extraneous evidence, vii. 421.
- — Lawyers', of their own system—Absurdity of confiding in, vii. 213-214.

Opinion—Trade in, by Counsel—Causes of the, vii. 280.

— Trade in, by counsel, considered at length in the Rationale of Evidence, vii. 315-318.

— How influenced by motives, ii. 388.

— Freedom of—Remarks on, in letter to Richard Carlyle, x. 527-528.

— Erroneous. Fallacies defined as employed to create, ii. 379, 380.

— Declarations of, by political assemblies. Matters to be attended to in the framing of, ii. 334.

— Effect of coercion on, i. 564-565.

— Extent to which compulsion may affect the progress of, vii. 108.

— Liability of, to be operated upon by interest, i. 217-218.

— Rewards and punishments attached to Declarations of; their demoralising effects, ii. 397.

— Subscription to matters of—its effects, ii. 260-262, 265-266.

— Evils of rewarding the support of, ii. 211.

— Demanding declarations of, from office-holders—Effect of, iii. 278-279. Propagates false opinions among those who are sincere, ib.

— Declarations of, are statements of mental facts, ix. 4-5.

Opinion—Public. Speed and certainty of its operations, i. 458.

— — Tribunal of—Analysis of, and comparison with the Official Tribunals, viii. 561-572.

— — See Public Opinion.

Opinions—Ingredients which enter into the trustworthiness of, ii. 388.

— Influence of fallacies of authority on, as illustrated from lawyers and churchmen, ii. 395-398.

— Religious. Criticism on the clause in the French Declaration of Rights regarding, ii. 513-515.

— New. The vanity of a wish to promulgate will not create, x. 145-146.

— in Legislative Assemblies—Why the delivery of, should precede the vote, ii. 342-346.

Opposer-General's justification—Not measures but men, and *vice versa*, discussed as a fallacy, ii. 470-471.

Opposition—as one of the Aristotelian Post-Predicaments, viii. 236.

— (party)—Interests that direct the proceedings of an, ii. 483-484.

— in Parliament—Tactics and operations of an, iii. 501-502.

Oppression distinguished from vexation, viii. 558.

— Declaration of imprescriptible right of resistance to, in the French Declaration of Rights, ii. 504.

— Necessary employment of professional lawyers affords means of, ii. 171.

Oppression at elections—Operation of, defined, iii. 558.

— Official—Arrangements for obviating, in the Constitutional Code, ix. 304-313. See Ministers Collectively.

— Shipboard—Arrangements for obviating, in the Constitutional Code, ix. 409-415.

— Judicial, on part of a pursuer—Counter-security against, ii. 105-110.

— Judicial, by means of costs, ii. 111-112.

Option—Meaning of reference to, in Penal Code, iii. 175.

Opulence as distinguished from wealth, iii. 36 n*.

— Authority derived from, ii. 389.

— Luxury a concomitant of, iii. 38.

— Aptitude for the purposes of good government sinks instead of rising, with the quantity of, ix. 110-113, 292-293.

— not, as vulgarly believed, a check to depredation, but an incitement and facility, ix. 113.

— Effect of, in weakening pecuniary temptation, vii. 397.

— as evidence disproving charges of petty predatory offences, vii. 62.

Opulent classes—Advantage of the existence of, to the public in general, i. 360.

— — Treasure of an insurance office to the indigent, ix. 34.

— — are more the enemies of the people, than the people are of them, ix. 143-144.

Or—The conjunction—a source of ambiguity in the English language, viii. 84-85 n.

Oral contracts—Exclusion of evidence as to, vi. 129-132. See Exclusion.

Oral evidence—Inapplicability of authentication to, vi. 120.

— — compared with written, vi. 170-171.

— — Supposed real transmitted through, vii. 152-154.

— — compared with epistolary, vi. 424-426. Particularity, 424. Interrogatedness, ib. Obstruction of mendacious invention, ib. Recollectedness, 425. Distinctness, 425-426. Saving of time, 425 n.

— — supposed, through oral, viz., Hearsay evidence, considered, vii. 132-134.

— — excluded in the proof of certain contracts, vi. 128-134. See Exclusion.

— — supposed, transmitted through written, viz., Minuted evidence, considered, vii. 138-139.

— — more liable to incorrectness of expression than written, vi. 254.

— — Personal—Nature of authentication with reference to, vii. 174-175.

— — supposed—Written evidence transmitted through, considered, vii. 137-138.

Oral examination—Epistolary should not shut the door against, vi. 434-436.

Oral interrogation, vi. 383-386. Rules—
 Promptitude of answer for obviating invention, &c., 383 ; questions one by one, and not in strings, 384 ; questions arising out of the answers, 384-385 ; response should be in judge's presence, 385-386.
 — — Uses of notation and recordation to, vi. 408-410. *See* Notation.
 — — is the chief beneficial peculiarity in jury-trial, vi. 506-507.
 — — England has the credit of originating vi. 506-507.
Oral wills—Regulation of statute of frauds as to, vi. 545, 546-547.
Orangemen—Opinion on the, x. 544.
 — Allusion to the persecuting disposition of, ii. 74-75.
Orator—Application of the term, to the president of a legislative body, ii. 327 n.
Orators—Legislative—Propriety of a tribune for, ii. 322.
 — Public. Uses of fallacies to, ii. 480-481.
Oratory. Character of treatises on the art of, ii. 379.
 — Superiority of, to writing as a useful political instrument, iii. 466.
Ordeals—belong to the same state of society as oaths, vi. 318.
Order—what it consists in, vii. 29.
 — Truth dependent on, i. 139 n *.
 — infused among the people by the contemplation of open legislative assemblies, ii. 311.
 — Advantages of, in legislation, ii. 332 n *.
 — Uses made of the term, as a vague generality, ii. 441-442 ; iv. 542-543. Adapted to any kind of tyranny, ii. 441. The worst is as truly order as the best, ib. Application of the modifications *good* and *social*, ib. Substitution of greatest happiness, 442.
 — How far it ought to be protected, from violation through religious observances, ii. 514-515.
 — Rules for accomplishing, in successive exhibition, viii. 270-271. General objects—not giving unexplained things, and not varying order when fixed, ib.
 — Habits of, would be one of the fruits of the Chrestomathic education system, viii. 12, 18.
 — Intellectual—When habits of, once acquired, easily transferable from one subject to another, viii. 12.
 — Good and bad, distinguished, iii. 252-253. Defect may be in respect of aggregation or disaggregation, or in respect of precedence, 253.
 — Meaning of a, in connexion with the word Rule, ix. 222-223.
 — Special, in equity, for admission of evidence, vi. 490.
 — Aggrandizement of their own, by the clergy, i. 505-506.

Order of the Day in Parliament—its nature, ii. 353.
Orders—Plan for Judges making, subject to disallowance of Crown or either House, iii. 367-371.
 — of Political Assemblies—Matters to be attended to in framing, ii. 334.
Orders of Knighthood, &c., as rewards, ii. 194-195.
Ordinals—Rules for the unambiguous use of, in language, viii. 315.
Ordinance—Definition of the term, ix. 222.
Ordinances—Notification of, for purposes of security against misrule in a semi-barbarous state, viii. 573-575. Scriptio, sanctionment, and registration necessary, in the first place, to the existence of the ordinance, 573. Improbability of their being such—The Koran as a body of law, 573-574. Necessity for something in the shape of a code, 574-575. Whether it should receive the form of a Charter or Declaration of Rights, or of a Contract, 575.
 — Means of multiplication of, in a semi-barbarous state, viii. 575-576.
 — Recitation as a means of promulgation of, in a semi-barbarous state, viii. 576-577.
Ordinary—Lord, in Court of Session—Duties of, v. 19, 23, 38.
 — — Factitious delay in procedure before, vii. 221-225. *See* Session—Court of.
 — — on oaths and witnesses in Scotland, vi. 421-422.
Ordinance Survey—Progress of the, in. 580 n.
Organic exercises—in the Chrestomathic system of Education, viii. 41.
Organic intellection-test principle, in the management of the Chrestomathic School, viii. 51.
Original—Regulations for substituting transcript to, where necessary, vii. 143-149. *See* Transcript.
 — No transcript ever exactly on a par with, vii. 143-144.
 — and transcript—How to distinguish between, vii. 150-152.
Original contract—Supposal of, attacked, i. 242, 261-272. *See* Contract.
Original and excretitious—Suits divided into, ii. 82.
Original evidence compared with transcriptitious, vi. 171-174.
 — preappointed evidence, as distinguished from transcriptitious, vi. 508.
Original outset Books, for the official departments, according to the Constitutional Code—Description of, ix. 234.
 — — Several sorts of, and method of keeping, ix. 236-242. *See* Books.
Original pleasures distinguished from derivative, i. 207.
Original sin—Confused association of political corruption with, ii. 454.

- Originality as an argument against a measure. Fallacy of, ii. 410-411.
- The jealousy it is exposed to, viii. 242.
- in thought—The measure of, x. 73.
- Orlando, a Greek Deputy—Notice of, x. 566.
- Orleans—Practice of the Provincial Assembly of, censured, ii. 344.
- Ornability as a property desirable in language, viii. 306-307.
- Orphan paupers—Considerations as to the rearing of, in cheap localities, viii. 364.
- Orthodox—Call upon the, to employ reason and not denunciation, in answering the Utilitarian arguments, x. 142.
- Orthoëpy, or the art of speaking right—Origin of, viii. 92 n.
- Orthography, or the art of writing rightly—Origin of, viii. 92 n.
- Osborne—Mr Justice—Prosecution of Cobbett for libel against, adduced, vi. 106-114.
- Osborne—Mr, of Turville Court—Visit to, by Bentham, x. 53.
- Oswald—James, of Dunnikier—Mention of, x. 95.
- Ought and ought not—meaning of the terms, i. 2.
- Oughton quoted, vi. 491, 492 n, 493-496.
- his arguments against publicity of evidence combated, vi. 357-358.
- Out-door relief to paupers—The difficulties in the way of proposed systems of, viii. 440-452. *See* Pauper Management: Poor-Law.
- Outlawry—Character of, as a punishment, ii. 574.
- The nature and effects of, i. 512-514.
- The several punishments it includes, 512-513. Case where it is applicable in its simple form, 513. Advantages and disadvantages of forfeiture of protection of the law, 513-514. Effect depends on the individual's position regarding property, and the honesty of those he deals with, ib.
- Incidence of, as a punishment, i. 474-475.
- is the punishment of poverty or absence abroad, vii. 254, 333.
- Indiscriminate operation of, condemned, ii. 94.
- Outline of a Plan of a General Register of Real Property* communicated to the Real Property Commissioners, v. 417-435.
- Outset Books—original and periodical, for the official departments, in the Constitutional Code—Nature of, ix. 234.
- Subspecific books of, and method of keeping, ix. 236-242. *See* Books.
- Overbulkiness—Relative, in the composition of laws. Remedies against, iii. 255-256.
- as a defect in the composition of laws, iii. 239, 246-247. Absolute and relative, ib. Remedies in the latter case, ib.
- Ovid referred to, ix. 112; xi. 187.
- Ovidiopol—Visit of Bentham to, on his way to Crichoff, x. 159.
- Owen—Robert—Opinion of, x. 570-571.
- His Establishment at New Lanark, x. 476-477.
- Owen v. Warburton—Case of, vi. 226 n *.
- Oxford (University)—Bentham's experience of, x. 35-45, 50.
- State of opinion and morals in, while Bentham was a student, x. 39.
- Perjury inculcated at, ii. 210.
- The want of high principle in the instructions of, x. 75.
- Subscription of 39 Articles at, iv. 382; x. 37.
- Oaths at—General corruption of national manners and understanding from, v. 209-219; vi. 274.
- Alterations made on the oaths of, and their tendency, v. 227-228.
- Extract from the statutes of, in respect to the obligatoriness of oaths, v. 224-226.
- Statutes of—their moral effect, ii. 260-262.
- Specimen of the laws of, to show the nature of the oath taken to obey them, v. 212-215 n.
- Antiquated and barbarous mode of keeping accounts of articles of diet in, ix. 252 n.
- and Cambridge—Difference in the respective constitutions of, with the historical causes, v. 215.

P

- Pacific and Atlantic—Proposal of a junction of, by means of a Joint Stock Company, ii. 561-571.
- Pacificus against the conquest of Ireland, xi. 64-66.
- Packing Special Juries—Elements of the art of, v. 61-186.
- Author's astonishment at finding it reduced to a system, v. 66-67.
- *See* Jury.
- Pain—Synonyms to the word, i. 205-206.
- The various kinds of, i. 19-20. Privation, 19. Unsatisfied desire, ib. Disappointment, ib. Regret, ib. Of the senses, ib. Awkwardness, 19-20. Enmity, 20. Ill-name, ib. Piety, ib. Benevolence, ib. Malevolence, ib. Memory, ib. Imagination, ib. Expectation, ib. Association, ib.
- A motive correspondent to every species of, vi. 257-258.
- Pains—Bodily, with the corresponding interest and motives, i. 204.
- Pains. *See* Pleasures and Pains.
- Painter—How far imagination necessary to the, viii. 76.

Palæology—Botanical and Zoological—illustrative of the rise of new branches in the Arts and Sciences, viii. 27.

Palate—Pleasures of the, i. 49-50.

— Pleasures and interest of the, with the corresponding motives, i. 197.

Paley—Remarks by George Wilson on the similarity of some passages in his Moral and Political Philosophy, to passages in Bentham, x. 163-164, 165, 195.

— noticed, or quoted, ii. 312; v. 370; vi. 271 n.

Palmer—John—his Postage plan noticed, i. 556; ii. 204.

— Allusion to ministerial usage of, xi. 136.

Palmer on costs cited, vii. 311.

Palmistry—Sources of credulity illustrated from, vii. 107.

Pannomial Fragments, or notes on an all-comprehensive body of laws, iii. 211-230.

PANNOXION, or complete body of Laws—Proposal to draw up for the use of the United States, iv. 453-467. *See* Code.

— Defined as an all-comprehensive Code, iii. 211.

— divided into the effective and the constitutive, and into the directive and sanctionative, iii. 216.

— Relation of Nomography, or the art of inditing laws to The, iii. 234-235.

— State of preparation of the various parts of the author's proposed, iv. 465.

— The Constitutional Code considered as a department of a, ix. 146-147.

— *See* Code: Laws—Body of.

PANOPTICON Penitentiary—Principles of the, i. 498-503. Shape, 498. Management, ib. Conductiveness to example, 498-499. To reformation by labour, temperance, separation, and instruction, 499-500. Suppression of power to injure, 500-501. Auxiliary Establishment for those discharged, 501. Compensation to party injured, ib. Economy, 501-503.

— Preface to the work on, iv. 59-40. General results, 39. Circumstances under which written, 39-40.

— Plan—circularity, cells, partitions, inspector's lodge, annular area, passage, windows, gratings, protracted partitions, means of communication, schoolmaster, warming cells, &c., iv. 40-41.

— Extent for a single building, with proportionate measurement of compartments, iv. 42-43.

— Extension of the principle of—union of buildings by areas, iv. 43-44.

— Essential points of the Plan—circularity and consequent facilities for universal inspection, iv. 44-45.

— Advantages of the Plan—frugality, control over inferior officers—removal of trouble from extraneous visitors—obvi-

ation of danger of infection—facilitating casual inspection by strangers, &c., iv. 45-46.

Panopticon Penitentiary—Preservation of safe-custody by, without cruelty, iv. 46-47.

— Conductiveness of, to reformation, through instrumentality of solitude, &c., iv. 47.

— Economy in, by the contract system—powers, responsibilities, and profits, of contractor, iv. 47-49.

— Free choice of labour part of the system—promotive of reformation, and advantageous to the community, iv. 49-51.

— Multiplication of trades in, unnecessary—division of labour—incidental notice of trades adopted in other plans, iv. 51-52.

— Checks on contractor of—Limitation on powers as to discipline, and plan for his having a pecuniary interest in preservation of lives, iv. 52-54.

— Means of extracting labour, iv. 54-55.

— Adjustment of labour in, so as to teach a trade that may be pursued on liberation, iv. 55.

— Prospect of saving from, in comparison with other proposed plans—powers of contractor over the labour of inmates, and economy of the establishment, iv. 55-58.

— The principle of making prisoners, before trial, pay for their support in, by work or otherwise, iv. 59-60.

— Application of, to manufactories, iv. 60.

— Application of, to mad-houses, iv. 60-61.

— Application of, to hospitals, iv. 61-62.

— Application of, to schools: considerations as to the rigour of the discipline it might occasion, and as to the means it would afford for experiments in Mental Philosophy, iv. 62-66.

— Postscript to Part I, containing further particulars and alterations, iv. 67-121.

— General view of the whole edifice for, iv. 68-69.

— Improvement on original design of, in removing the stories of intermediate area between inspectors and prisoners, and leaving an annular well, iv. 69-71.

— Omission of the protracted partition, iv. 71.

— Adaptation of the cells in, to mitigate absolute solitude—double cells, 71-76. Solitude no farther desirable but as a means of subduing the refractory, and obviating contamination or combination, ib.

— Position in life that should be held by the governor of, iv. 76-77, and n.

— Uses to be made of the "dead part"

- of building of—Considerations as to accommodation for officers, infirmary, &c., iv. 76-78.
- Panopticon Penitentiary**—Chapel of—its adaptation both for worship, and at other times, as a means of visitors inspecting, iv. 78-79.
- — Annular-inspection galleries found to be necessary in, as central inspection lodge not capable of being screened from prisoners, iv. 80-86.
 - — General means of communication in, ix. 86-94.
 - — Means of communication reserved for the prisoners—stairs, &c., of open iron-work, and other means of keeping observation on their motions, iv. 87-88.
 - — Inspector's stair-cases—how arranged, iv. 88-89.
 - — Stair-cases, &c., for visitors, and to the officers' apartments, iv. 89.
 - — Arrangement of cell galleries in, iv. 90.
 - — Doors and locks, and warning bells adapted to, iv. 90-91.
 - — Diametrical passage of, for entrance of officers and visitors, and admittance of machines and bulky packages, iv. 91-92.
 - — Arrangements for exit into the yards, iv. 92-94.
 - — Exterior annular well or area of, iv. 94-95.
 - — Lighting and airing of. Low glazed windows advocated in opposition to the high unglazed proposed by Howard, iv. 95-97.
 - — Materials used in—hollow iron-work, from its strength and the little room taken up—plaster for floors, iv. 97-98.
 - — Airing yards of, with exit and entry to, employment in, and method of parading prisoners, iv. 98-105.
 - — Approach and fences—means of protection in locality and construction, from violence without, iv. 105-109. Building thrown back from the road, with single approach narrow at entrance, overlooked and guarded, &c., ib.
 - — Means of supplying water to, iv. 110.
 - — Means of warming—united with ventilation, by heating the air, iv. 110-118.
 - — Economy observed in the construction of—application of the same place to variety of purposes, iv. 118-121.
 - — Postscript, Part II. Principles and plan of management, iv. 121-171;—
 - — Leading Positions of the management of, iv. 121-125. Leading objects, 121-122. Rules to meet—viz., Rule of security, of severity, and of economy, 122-123. Articles of supply—power in the extent to which they are given of aggravating or decreasing the assigned punishment, 123-124. Amount of food peculiarly power-
- ful in its incidence on the prisoner's fate—remedy an unlimited supply of food, but too coarse to tempt to excess, 123-125.
- Panopticon Penitentiary**—Contract management of, farther urged, iv. 125-134. Evils of trust, and especially board management, with illustrations—inefficacy, want of economy, and want of responsibility, ib.
- — Provision, architectural and directional, for the separation of the sexes in, iv. 134-137.
 - — Separation of prisoners in. Arrangement in companies preferred to classification, which admits of numbers being associated, iv. 137-141.
 - — Employment for convicts under the arrangements of, iv. 141-153. The most lucrative, 141. Variety, as productive of relaxation without idleness, 141-142. Effect of sedentary employments in economizing food, and stifling dispositions and powers unfavourable to security, ib. Quantity of labour, and number of work-hours, as great as can be extracted, 142-143. Instances of waste of labour from the Penitentiary Act, &c., 143. Setting convicts to work to no profit, and for working's sake, unadverted on and illustrated, ib. Fallacy in the expression "hard labour," used without any consideration to its proper purposes, 144. Gives a bad name to industry, ib. Real hard labour only purchased by reward, ib. Trades peremptorily fixed by law may turn out uneconomical, 144-145. Commentary on the species of labour laid down in the Penitentiary Act—capstern, tread-mill, &c., 145-147. Hours censured—less in winter than in summer, 147-149. System of reducing the hours of labour in the ratio of the duration of punishment, censured, 148-149. Prolongation of period of confinement as a punishment for prison offences, censured, 151-152. Recapitulation of fallacies, 153.
 - — Dietary of, iv. 153-156. No variety, and the least palatable in use, but unlimited in quantity, 153. Liberty to purchase any addition but liquor, from surplus earnings, ib. Reasonings against artificial plans for limiting the amount and improving the nature, 154-156.
 - — Clothing of prisoners in the—System of, iv. 156-157. Adaptation to economy and prevention of escape—one arm bare and wooden shoes, ib.
 - — Bedding for prisoners in the system of, iv. 157.
 - — Arrangements for health and cleanliness in the system of, iv. 157-158.
 - — Provisions for airing and exercise in the system of, iv. 157-160. Sufficiency for health, inspection, seclusion, regularity,

and economical application to use, are the desiderata, 158. Argument that the treadmill possesses these, and arrangements for its application, 159-160.

Panopticon Penitentiary—Schooling and Sunday employment adapted to, in conjunction with religious observances, iv. 161-162.

— Ventilation, shading, and cooling of, iv. 162.

— Distribution of time in—length to be consumed in meals, sleep, relaxation, and work, iv. 162-163.

— Punishments for offences committed in, iv. 164. Mutual responsibility system, ib.

— Mode of guarding on the outside. Prejudices against employment of the military for such purposes controverted, iv. 164-165.

— Provision for the prisoners liberated from, iv. 165-171. Not to be discharged, but on entering land or sea service, or finding a security for good-behaviour, 165-166. Arrangements for facilitating the last alternative, 166-168. Chances of a subsidiary establishment being conducted by the contractor for the Panopticon, ib. Security to the public that no criminals let loose, 168. Conduciveness to reformation, ib. Objections of hardship controverted, 169. Contamination obviated by preservation of the Panopticon system, ib. Plan acknowledged to be imperfect, but favourably contrasted with Penal colony and National Penitentiary, 169-171.

— Adaptation of, to training for the army and for colonies, iv. 169-170 n.

— Note by the author explaining the manner in which the scheme was defeated, iv. 171-172.

— Necessity of the principle of, as a prevention to escapes, illustrated in the state of the American Penitentiaries, iv. 233-242.

— Method of inciting the convicts in, to industry, by giving them a share in the profits, iv. 217.

— Superiority of to transportation, as a means of reformation, while, as a means of incapacitating offenders, it is less arbitrary, iv. 194-195.

— Superiority of, to transportation, in respect of preservation of life, iv. 196-199.

— Remark by Colonel Barré on the author's plan of, i. 251.

— Application of the principle of, to the public offices, ix. 327-333.

— Application of the principle of, to poor's houses. See Pauper Management.

— Account of the circumstances under

which the work on, was written, in Russia, x. 165.

Panopticon Penitentiary—A copy of the work on, sent to Brissot, x. 226.

— Approval of the plan of, by Prison Committee of Spanish Cortes, iv. 571-572.

— Hopes and disappointments about, x. 250-251.

— Communications with Mr Reveley, the Architect, regarding, x. 251-252.

— Letter from Sir R. P. Carew as to, x. 252-253.

— Letter from Dr Anderson as to proposals for, in Scotland, x. 254-255.

— Points of economy in, as explained in a letter to Dr Anderson, x. 256-258. Potatoe diet, 256. Clothing—stockings, shoes, shirts—skirts short; hats and caps unnecessary, ib. Bedding, ib. Arrangement of working hours, ib. Mode of dressing potatoes, 256-257. Inquiry into productiveness and cost, 257. Suggestions as to contract, 257-258.

— Letter to George III. about, x. 260-261.

— Considerations as to attempting the adoption of, in France, x. 264.

— Correspondence with J. P. Garraon on introduction of, in France, x. 269-270.

— Letter to a lady about, x. 273-274.

— Letter to Sir Samuel Bentham as to Pitt and Dundas' proposal to inspect the model of, x. 291.

— Hopes concerning the progress of, in 1793, x. 294.

— Letter from Romilly about, with description and sketch of Edinburgh Bridewell as an instance of its partial adaptation, x. 291-295.

— Letter to Philip Metcalf on the delay and suspension of the works, x. 301-302.

— Narrative of official impediments to obtaining audiences about, x. 306-307.

— Letter to Duke de Liancourt, expressing anxiety as to the progress of the contract for, x. 312-313.

— Bill for appropriation of Tothill Fields for, x. 323.

— Correspondence with Sir William Pulteney, urging him to adopt the charges of ministerial malversation in regard to, x. 384-386.

— Letter from Wilberforce on Bentham's disappointments regarding, and on the prudence and justice of his proposed exposure of the ministerial transactions regarding, x. 391-395.

— Correspondence with Romilly as to the proposed attack on the Duke of Portland on the subject of, x. 399-400.

— Personal identification marks as part of the arrangements of, x. 414-415.

Panopticon Penitentiary—Statement in the *Quarterly Review*, that Bentham was made a disappointed man by, commented on, x. 541-542.

-- Letter to Colonel Young as to Lord William Bentinck's favourable opinion of, x. 576-577.

-- Letter to Rammohun Roy about, x. 589-592.

-- Selections from a narrative prepared by Bentham on the subject of, xi. 96-107. Outline of the plan, 96 n. Commencement of the war with George III., 96-97.

• The form suggested by Sir Samuel Bentham, 97. The importance of the architectural construction, 97-98. Eden and Blackstone's Hard Labour Bill, and the View of it, 98. Outline of the proposal submitted to Messrs Pitt and Dundas, 99-100. The Act of 1794, appropriating Battersea Rise, 100. The approval of the Finance Committee, *ib.* Mr Colquhoun's evidence, and Mr Abbot's approval, 100-101. Personal difficulties about the locality, 103. Purchase of Millbank—final opposition, 101-102. The Pauper management Plan, 103. The Committee, and the Millbank Act of 1811, 103-104. Proposal to adopt the system in Ireland, 104. Lord Westmoreland, *ib.* The Duke of Portland's inspection, 104-105. Conduct of Wilberforce, Pitt, and others, 105-106. Final abandonment of the measure—compensation awarded, 106-107. General remarks, 107.

Panopticon Correspondence—viz., Selections from the miscellaneous correspondence and documents relating to the Panopticon Penitentiary Plan, xi. 107-170;—

-- Letter to Earl Spencer, showing that the building cannot be injurious to the value of his lands, xi. 107-112.

-- Letter to Henry Dundas—Lord Spencer's opposition, xi. 112-113.

-- Letter to Wilberforce, complaining of official conduct, xi. 113-114.

-- Reasons in favour of the spot near Woolwich, and answers to objections, xi. 114-115.

-- Conduct of the Bishop of Rochester, and a Letter from Wilberforce on the subject, xi. 115-116.

-- Letters from Romilly, xi. 116.

-- Letter to Rose—ruinous expenditure—suggestion of a method of terminating the hulks system without injury to any official persons, xi. 116-117.

-- Answer from Rose to the above, xi. 117-118.

-- Letter to Wilberforce—the rise in prices since the proposal of terms, xi. 118.

-- Letter to Lord St Helens—general state of the question—case against the Pitt ministry, xi. 118-120.

Panopticon Correspondence—Letter to Sir Charles Bunbury—state of morality in the hulks—necessity for a change of system, xi. 120-121.

-- Letter to Sir William Pulteney—notice of his (Bentham's) published works—conduct of the Treasury—objections to the rise of terms an excuse, xi. 121-123.

-- Letter from Lord Pelham to Sir C. Bunbury, xi. 123.

-- Letter to Sir C. Bunbury, commenting on Lord Pelham's letter, xi. 123-127.

-- Letter to Romilly on Lord Pelham's letter, xi. 127.

-- Letter from Sir C. Bunbury on Lord Pelham's letter, xi. 127.

-- Letter to Dumont—The illegal transportations to, and detentions in New South Wales—the official conduct as to Panopticon, xi. 127-132.

-- Letter to Charles Abbot—the abuses at New South Wales—the conduct of the Pitt and of the Addington ministry as to the Panopticon, xi. 132-139.

-- Letter to Charles Abbot—complaints of Wilberforce's lukewarmness—Lord Pelham's letter—Long and Hiley Addington's contempt for Acts of Parliament, ix. 139-141.

-- Letter to Dumont—negotiations, Sir C. Bunbury, Sir Evan Nepean, Lord Pelham, Wilberforce, xi. 141-143.

-- Letter from the Rev. Brownlow Ford on public executions, xi. 143-144.

-- Letters from Romilly on the pamphlet called "Plea for the Constitution," xi. 144.

-- Letter from Sir Joseph Jekyll on Lord Pelham's letter, and the prospects in Parliament—Bentham's answer, xi. 144-145.

-- Letter to Sir C. Bunbury—on the Plea for the Constitution, &c., xi. 145.

-- Letter to Wilberforce, charging him with not acting in unison with his professed feelings, and Wilberforce's answer, xi. 145-147.

-- Letter from Wilberforce in reference to his bringing the matter before Parliament, after an interval, xi. 147.

-- Letter from Romilly, on the Report of the Select Committee in 1811, xi. 148.

-- The Report by the Select Committee of 1811, recommending the contract with Bentham to be cancelled, and compensation to be given to him, xi. 148-151.

-- Second Report of the committee, containing answers from Bentham to the objections in the first Report, with suggestions for dealing with the convicts not included in the new contracts, xi. 151-159.

-- The objections of the committee far-

- ther obviated in a communication to a party unknown, xi. 159-162.
- Panopticon Correspondence—Letter to Romilly on the choosing of arbiters to fix the compensation, xi. 162-164.
- — Extract from the 28th report of the Finance Committee in favour of Bentham's plan, xi. 165-167.
- — Bentham's examination before the Finance Committee, xi. 167-170.
- Panopticon* versus *New South Wales*, in letters to Lord Pelham—a comparison of the Panopticon system with the Transportation, iv. 173-248. *See* Transportation.
- Paper—Adoption of different kinds of, for different species of contract, vi. 522.
- Indications of spuriousness from the nature of, vii. 181-182.
- Paper—Demand, in suits—Nature and contents of, ii. 66-70.
- Papers—Criminative, inferences against accused from possession of, vii. 13-14.
- Paper-currency—Adjustment of, to commercial wants and security, through the project of conversion of stock into Annuity notes, iii. 133-136.
- — Project for a, by the conversion of stock into Annuity notes, iii. 105-153.
- Paper-money—The effects of, iii. 46. Divided into Government paper, which generally is not, and private, which generally is issued in a commercial manner, ib.
- — Efficacy of the project of circulating annuities as against deficiency or superabundance of, iii. 107 n *.
- — Influence of, on prices, iii. 108.
- — Influx of. How to obviate rise of prices in case of, iii. 139-141.
- — Reference of increase of, to that of commodities, iii. 141.
- — Described as imposing a tax on the community, iii. 141 n.
- — Reasons why the Crown should have the monopoly of fabricating, iii. 148-149; x. 339.
- — Reasons why that of the Government does not circulate on such advantageous terms as that of individuals, iii. 149-153.
- — Principles as to, for the guidance of the Finance Minister in the Constitutional Code, ix. 449.
- Paracelsus, noticed, ii. 401; viii. 217.
- Parade. Privilege of a soldier to make complaint on—its inadequacy as a protection, ix. 379.
- Paradoxical assertion—The fallacies of, ii. 463-466.
- — How it may be turned to account, ii. 465-466. Can only be used by leader of a party, 465. Safer in speech than in writing, ib. The greater the absurdity the more readily believed, 466.
- Paragraphs—Proper arrangement of, in laws, iii. 208.
- in written evidence should be short and numbered, vi. 441-443, 485.
- Parallactico-suncrotic source of motion—by gassification and degassification, viii. 134-135. Illustrated in steam-engine, ib.
- Parallelism as a mode of exposition, viii. 248.
- Paraphrasis, defined, i. 293 n.
- Operation of, for explaining the nature of a fictitious entity, viii. 126-127 n.
- Modes of exposition by, and subsidiary to, viii. 246-248. *See* Exposition.
- Pardon—Frustration of justice in the use of the power of, iii. 283.
- as a reward for services, ii. 196, 200.
- Provisions for the exercise of the power of, by the Constitutional Code, ix. 600-607. *See* Justice Minister—Dispunitive Function.
- Method of granting, in Britain, considered, vii. 257 n *, 425.
- Effect of, in restoring competency of witness, vii. 435-436.
- Use of a scale of probative force for the application of the power of, vi. 228.
- Power of, exercised in the principle of nullification, vii. 256-257.
- Power of, possessed by witness absenting himself, vii. 361.
- Abuses that the practice of, may give occasion to, vii. 258-259.
- Pardon-power considered, i. 520-521. Gratuitous, an evil, 520. Cases where necessary, ib. Power possessed by prosecutors in choosing form of action, 521. Made popular by death-punishment, ib.
- — in monarchs, has effect of encouraging notions of divine right, i. 529.
- — Restrictions proposed for, i. 529-530.
- Multitude of offenders, discovery of innocence, service to be obtained, danger of punishment, ib.
- — is involved in the system of purely voluntary prosecution, iv. 390.
- — as distinguished from dispensing, iv. 392.
- — Predicates injustice, and is employed for the gratification of tyranny, ix. 36-37, 605-607.
- Pardons—Tax on, ii. 169, 579. Repealed, 579 n.
- Parent and Child—Principles of the Civil Code regarding, i. 348-349.
- — Effect of the relation between, on testimony, vi. 161; vii. 576.
- — Offences that may be committed against the respective conditions of, i. 127-129.
- Parents—relieved from the labour of superintending their children, by the Chrestomathic system of Instruction, viii. 13-14.

Parents—Aggravated nature of corporal injury to, i. 165, 167.

— Their desire to see their children raised above themselves, viii. 23.

— Their regard for the reputation of their children, i. 337.

— Limitation of power over their children in respect of marriage, i. 356.

— Responsibility of, for children, in regard to reparation for offences, i. 385.

Parentage—How far it should influence denization, ii. 543.

Parental authority—Origin of, i. 121 n. †.

— Bentham's first visit to, x. 47.

— Visit of Bentham to, in 1770, x. 66-67.

— Visit by Bentham to, on his way to Russia in 1785, x. 149-150.

— Visit by Bentham to, in 1802, x. 399.

— Visit by Bentham to, in 1825, x. 551.

— Parliament of—Method of stating opinions in, ii. 346.

— Influence obtained by the Parliament of, from the power of registration, ii. 348 n. †.

— Useful arrangements for plans and surveys illustrated from a map of, v. 429-430.

Paris—The Abbé, miracles at the tomb of, vi. 271.

Parish courts—Provision for, in Draft of Judicial Establishments for France, iv. 296-298.

Parishes and manors. The relations between, v. 430.

Park—Mungo. Interest felt in the negro race from perusal of travels of, i. 562.

Park—Mr Justice, noticed, v. 331, 354, 356.

Parker—Sir Hyde, noticed, x. 94, 104-105.

Parker—Sir Thomas—Chief Justice, noticed, vii. 492 n.

Parker—Sir Thomas—Chief Baron, noticed, v. 162.

Parker—"View of Society, &c.," by, referred to, i. 554.

Parkes—Joseph—Letter to, x. 548.

Parliament. Indirect power of, to displace ministers, i. 572.

— Effect of, in controlling judicial despotism, ii. 12.

— The law as to qualifications for members of, considered, ii. 249.

— Publicity as to the proceedings of, ii. 315-317.

— Method of arranging members of, ii. 321-322.

— Absence of a tribune in, ii. 322.

— Sittings of—How the times of, determined, ii. 323.

— Attendance of members of, considered, ii. 325.

— Admission of strangers to, ii. 326-327.

— Practice of, as to receiving motions in the exact terms in which they are to be passed, ii. 335, 336-338. Illustrations of a different practice formerly, 337-338 n.

Parliament—Practice of, as to unity of subject of debate, ii. 342.

— Practice of, as to finishing debates before voting, ii. 343.

— Practice of, as to the absence of pre-audience to particular speakers, ii. 347.

— Practice of, as to taking the votes simultaneously, ii. 349-350.

— Practice of, as to the initiative of measures, ii. 351-352.

— Practice of, as to orders of the day, ii. 353.

— Practice of, as to the bringing in and readings of Bills, ii. 353.

— Practice of, as to the difference between debates in House and in Committee, ii. 359-360.

— Practice of, as to the privilege of reply, ii. 360.

— Classification of fallacies from the parties in, ii. 381.

— made a Gaming House by jobbing politicians, ii. 385.

— Operation of fallacies of authority in, ii. 394.

— Position of members of, with regard to influence, responsibility, &c., ii. 394.

— How to postpone measures in, from session to session, ii. 435.

— Origin and progress of, in England, ii. 444.

— Influence of the Crown in, ii. 440, 467.

— Declarations on abstract points justly unpopular in, ii. 497.

— Effect of the vicious mode of drawing the statutes, in leading members of to error and confusion, iii. 242-243.

— Advantage that may be taken of the want of fixed periods for dissolution of, iii. 456.

— Exclusion of placemen from votes in, iii. 456-457.

— Laxness of attendance of members of, and the effects, iii. 457-458.

— Proposal that placemen should have seats, but not votes in, iii. 490-495.

— Constant attendance of members of, as an element of reform, iii. 495-511. See Members.

— Bill for more adequate representation of the people in, iii. 558-597.

— Gradual rise of the supreme power of, iv. 259.

— Many would not sit in, if they could not indulge themselves in idleness, iv. 374.

— Contempt for the authority of, on the part of judges, exhibited in "The Art of Packing Juries," v. 176-186. Dangerous nature of this insubordination, 176. Contempt of the part of the Bill of Rights which requires juries not to be partial and corrupt, and to be properly empanelled, 176-177. Nullification of Howard's Act, for the relief of prisoners against whom no bill found, 178-180. Proposal

- for a Committee of Inquiry into the circumstances, and correspondent resolutions by the Commons, 180-181. Protest against the doctrine that the practice is unexcusable and unpunishable, 181-182. Protest against declaratory acts, which disguise wilful disobedience of clear, as misinterpretations of doubtful enactments, 182-183. Slight prospect of redress—uselessness of annual committee of justice, 183-184. Proposal for a Court of Lords' Delegates as a remedy, 184-186.
- Parliament**—The practice of, in collecting evidence, an admission of the inutility of oaths, v. 197.
- Opposition of the Church of England to the authority of, v. 228-229.
 - Gratuitous service in, cited in opposition to Burke's opinion, v. 295.
 - The early attempts of, at Law Reform, vii. 269-270 n.
 - Disclosure of information refused in, by ministers, &c., vi. 96.
 - Contempt shown by judges to the authority of, vii. 311-315.
 - Committee of. Mode of collecting evidence before, vi. 35.
 - Prorogations, &c., of, a device by the monarch to get rid of opposition and annoyance, ix. 164-165.
 - Bentham's correspondence with Lord Lansdowne on an understood promise to obtain him a seat in, x. 229-245.
 - Proposals for having tables in, with the subject of debate, and the rules of the House in visible types, x. 344.
 - of France. Disposal of appointments in, ii. 247.
- Parliaments**—Early historical events influencing the constitution of, iii. 513-515.
- Historical notice of legislation as to the duration of, iii. 524-525.
 - Annual and triennial, compared, iii. 521-525.
 - See Legislature: Member of Parliament.
 - Annual. An early debate on, noticed, iii. 455-456 n.
 - Annual. Notices of supporters of, iii. 458.
 - Short, as a means of preventing corruption, iii. 455-456.
 - Short. Reasons for, iii. 512-515. Reasons on the ground of utility, 512-513. On the ground of usage—investigation of early practice, 513-515.
- Parliamentary Candidate Society**—Formation of, xi. 66.
- Parliamentary debates**—Publication of, vi. 78-79.
- Parliamentary Logic**—Hamilton's, criticised, ii. 383-387.
- Parliamentary management**. Expense occasioned by, ii. 202.
- Parliamentary papers**—Publication and sale of, proposed, ii. 353.
- Parliamentary practice**—Ignorance of, from non-attendance of members, iii. 497-500.
- Parliamentary procedure**. The seeds of British liberty to be found in, ii. 332.
- Parliamentary Reform**—Objection, that the mode in which it was applied for tended to lower the Legislature in the eyes of the people, answered, ii. 427-428.
- — Popular corruption employed as an argument against, ii. 453-455.
 - — Plan of, in the form of a catechism, iii. 434-557.
 - — Introduction to Plan of, iii. 435-38.
 - — History of the circumstances under which Plan of, was written, iii. 435.
 - — Resolutions on—drawn up by Bentham, and moved by Sir F. Burdett, x. 495-497.
- Parnell**—Sir Henry, senior, Chancellor of the Exchequer in Ireland, quoted in "Defence of Usury" against reduction of interest in Ireland, iii. 47 n †.
- Parnell**—Sir John. His anxiety to get the Panopticon system adopted in Ireland, iv. 171; xi. 104.
- Parr**—Dr Samuel—Bentham's introduction to, x. 62.
- — Letters about—Bentham to Dumont, and Romilly to Bentham, x. 403-404.
 - — Letters from, x. 404, 404-405, 416-418, 537-538.
 - — Letters to, x. 411-412.
 - — Correspondence with, on the project of a code for Greece, x. 534-536.
 - — Death of, x. 554.
 - — casually noticed, x. 60, 428; xi. 144.
- Parrot**—Professor. Anecdotes of, by Dumont, x. 409.
- Parry**—Captain, Contradiction of his slanderous account of Bentham, xi. 66-67.
- Parsimony**, penuriousness, &c., as designative of motives, i. 198.
- Parsing**—Utility of the exercise of, in schools, viii. 45.
- Parts of speech**—Systematical sketch of, viii. 187-190.
- — — See Speech—Parts of.
- Partial counsel**—Purging a witness of, vii. 440.
- Partiality**—Nature of, i. 53.
- favouritism, &c., as designative of motives, i. 202.
 - Subtle and undetectable nature of the action of, ii. 130.
 - Methods of obviating, in the tribunals projected in the Constitutional Code, ix. 494-496.
 - or enmity of witness—Effect of. See Cautionary Instructions.
 - necessary to the making incorrect evidence produce deception, vi. 211-212.
 - between interrogators and interrogatees—how far it may be calculated on, vi. 346-347.

Partiality—how it may affect the cognizance taken by the mind of a fact, vii. 571.

- probably an originating cause of exclusion of evidence, vii. 391.

Partiality-preacher's argument—From the abuse argue not against the use, ii. 469.

Particeps criminis—Evidence of, not excluded in English practice, though uniting interest and improbity, vii. 414-415.

Participles in the grammar of verbs, viii. 355.

Particularity—an internal security for evidence, vi. 283, 286-287.

- **Of testimony**—Interrogation tends to produce, vi. 332.

Partition—General, of property—Impracticable and consequently no serious design to attempt, iii. 605-608.

Partners—Liability of those who employ their money in trade as, iii. 47-48.

Partnership—Commercial—Reason why there may safely be community of goods in a, i. 342.

- Litigation conducted by a member of a, ii. 36-37.
- Entrance on and dissolution of, as subjects for registration, vi. 567.
- between judges and lawyers, vii. 201-209. *See* Interest—Sinner.

Partnerships en commendite in France, worthy of imitation, iii. 48.

Party (to a suit)—Exclusion of evidence of, in the shape of evidence, by English practice, ii. 25.

- Evil effects of excluding evidence of, ii. 58-59.
- only by his examination that his pecuniary circumstances can be known, vi. 363-364.
- and witness—False distinction between, in some cases, vi. 281 n.
- Evidence of, against himself, the best, vi. 137; vii. 26.
- manner in which his interest would affect testimony by him in relation to the suit, vii. 581-584.
- Evidence of, so plainly subject to interest, that it does not deceive, vii. 124, 147.
- Evidence of, more trustworthy than that of an interested witness, vii. 401.
- Self-inculpativ evidence of—Prejudices as to oaths preclude, vi. 317.
- Impropriety of excluding the testimony of, for or against himself, vii. 487-489.
- one calling for production of the casual script of another—Proper method of proceeding in the case of, vii. 123-124.
- offering a writing of his own in evidence—how to proceed in such case, vii. 124-125.

Party (Political)—The author's non-attachment to, i. 248.

- The duties of public men to their—

Burke's opinions on, controverted, v. 291-292.

Party feeling—Influence of, on judge, vii. 259.

Party spirit—Effect of, on the administration of justice, vii. 450.

Party leaders—dislike a complete Constitutional Code, as leaving no room for their machinations, iv. 537.

Parties—Personal attendance of, in courts

- Purposes served by, and reasons for, ii. 34-35; iv. 319-321.
- Expense and inconvenience occasioned by want of personal presence of, ii. 113-114.
- Cases in which they may appear by proxy, ii. 49-52.
- Suits complex or simple, according to the number and nature of, ii. 80-81.
- Suits pluralateral or unilateral, according to the number of, ii. 82-84.
- Provision for Forthcomingness of, ii. 47-48.
- Initiatory examination of, for purposes of proposed Dispatch Court, iii. 413-418.
- should be examined, under the sanction of punishment for the truth of what they state, vi. 297-302.
- Exclusion of, from the presence of the judge, as one of the devices of Technical procedure, v. 8.
- Exclusion of, from presence of judge, a device petitioned against in Petition for justice, v. 446-448, 508-509. Mendacity, &c., licensed, 446-447. Interest lawyers have in the mendacity does not extend to criminal cases, where escape is dangerous to all, 447-448.
- Exclusion of, from the presence of the judge, examined in relation to the best sources of evidence, vii. 226-233. Managed by rendering their presence nugatory, 226. Character of their testimony—immediate and non-immediate, 227. Functions, for performance of which the plaintiff's presence requisite, 228;—for which the defendant's requisite, 229-230;—for which that of both requisite, 230. Anticipative survey, ib. The effect of publicity in controlling the desire of falsehood if parties were examined, 230-231. Good effect in saving expense, &c., by each knowing what the other is to prove, 231-232. How far a succedaneum to the appearing may suffice in some cases, 232. Uses of the exclusion to judges, 232-233.
- The exclusion of their testimony for or against other parties on the same side, considered, vii. 506-517. *See* Co-parties.
- The exclusion of their testimony regarding the authenticity of deeds, considered, vii. 189-190.
- Propriety of their examining, and being examined by, each other, witnesses, &c., in suits, vi. 334-345. *See* Interrogation.

- Parties should be subject to interrogation by their own advocates, vi. 336-338.
- Preliminary examination of, would have destroyed profit from *malá fide* causes, vi. 479.
 - Initial or preliminary meeting of. *See* Meeting—Preliminary.
 - Protection of, from violence, &c., a reason for restricting publicity in courts of justice, vi. 360-361.
 - Reasons for examination of, in proposed Dispatch Court, iii. 306.
 - Excuses for non-appearance of—Considerations regarding, iii. 420-421 n.
- Parties (Political) in Britain—Interests which direct the proceedings of, ii. 482-484.
- in Parliament—Incidence of Reform on the interests of, iii. 527-529.
 - Rivalry between—how far favourable to the public at large, viii. 570-571.
- Passion—a physical fictitious entity, viii. 200-201.
- considered as one of the predicaments, viii. 235.
 - Relation of, to pleasure and pain, x. 509.
 - and Reaction—as simple fictitious entities connected with relation, viii. 204-205.
- Passions—The malevolent, as a cause of crime, i. 539.
- Methodization as applied to the purpose of operating on the, viii. 273.
- Passive obedience—Influence of, and cause of the invention of the principle, ii. 476.
- Patents for Inventions—Effect of, as monopolies, beneficial to the community, ii. 533.
- Operation of, as rewards, ii. 212.
 - Principle of granting, iii. 71-72. A general inducement held out to all men to make discoveries: the expense as an impediment, 72. Register of marks proposed, ib.
 - Expenses and impediments attending obtainment of, ii. 214.
 - Pressure of fees upon, x. 373.
 - Rights in, as subjects of evidence, vi. 5 n.
- Paternity—False presumption of, from husband's non-expatriation, vi. 53-54.
- Pater est quem nuptiæ, &c.* The effect of the doctrine, i. 473.
- Paternal condition—Forfeiture of, as a punishment, i. 471.
- How far forfeiture of, can be accomplished, i. 472-473.
- Pathematology - The science of Psychology so far as pleasure and pain are involved in it, viii. 288.
- Patheticalness—a property desirable in a language, viii. 191.
- Pathocinetick Coenonesiology, or Rhetoric—Position of, in the Encyclopedical Sketch of Art and Science, viii. 91.
- Pathological. Employment of the term in legislative matters, iii. 182 n.
- Pathological evidence, vii. 45 n †.
- Pathology—Etymology of, and place in the Chrestomathic system of Instruction, viii. 36.
- Application of, to moral science, i. 304.
 - Propositions of, on which the principle of Equality is founded, i. 304-307.
 - Moral and Political. Definition and use of the term, iii. 212.
 - Psychological. Application of the term, i. 205.
- Pathology—Mental—Axioms of, iii. 224-230;—
- — — a necessary ground for legislative arrangements, iii. 224-225. Express consequences of acts in respect of pleasure and pain, 224. Arithmetic and medicine adduced, ib. Security, subsistence, abundance, and equality, to be kept in view in their formation, 224-225.
 - — — Applying to security for the person, iii. 225-227. Antipathy and revenge—Pleasures caused by, not equal to the pains, ib.
 - — — applying to subsistence—a provision for the poor, iii. 227-228.
 - — — applying to abundance, iii. 228.
 - — — applying to equality in respect of wealth, iii. 228-230. Extent to which amount of wealth brings correspondent happiness, 228-229. The relative pain and pleasure, of the parting with and receiving of matter of wealth, adjusted to the position of the parties in point of riches, 229-230.
 - — — relating to power, rank, and reputation, iii. 230.
- Pathoscopic Pneumatology, or the Philosophy of Sensation—Position of, in the Encyclopedical Sketch of Art and Science, viii. 88.
- — Division of, into Aplopathoscopic and Thelematoscopic, viii. 89.
- Patriot King—Bolingbroke's, criticised, x. 72.
- Patriotic Auction—The, by which tenders are received from qualified persons for judicial offices, for the public behoof—explained and defended, iv. 372-378.
- Patriotism—Nature of, i. 53.
- Unjust and exclusive, noticed, i. 563.
 - Public Spirit, &c., as designative of motives, i. 202.
 - The professed homage paid to, in the exclusion of foreigners from drawing codes of law for the use of any state, censured, viii. 497-499.
- Patronage—Elements of the power of, ix. 49.
- of an office—how far equivalent to possession, iii. 339-340.
 - Secretary of State, the best depositary of, in Britain, as he is responsible in Parliament, v. 345.

Patronage—Colonies a fruitful field of corruption through, iv. 418.

— Bestowal of, a more powerful instrument of corruption, than bestowal of office or wealth, as there is no necessary limit to the amount that may be given, iv. 434.

— Propensity of, to come into existence wherever there are rewards to be disposed of, iv. 552.

— Profit of, to the holder, vi. 422.

— The possession of, equivalent to so much salary, v. 352.

— When spoken of as of value to the owner, must be understood to be abused by him, v. 570.

— Ecclesiastical. How to be adjusted when patron's creed adverse, ii. 509.

Paul—The Emperor—Anecdotes of, by Dumont, x. 408-410.

— — Bentham's exertions to get him to pay the pension granted by Stanislaus of Poland to Mrs Lind, x. 358-359.

Paulet—The Chevalier—Benevolent establishment of i. 570.

PAUPER Population Table, for a return of the paupers in each parish, with statistical facts relating to them—Transmission of to Editor of *Annals of Agriculture*, viii. 361.

— — Observations on, viii. 362-365. Necessity of facts for proper discrimination in management, 362. Differences in the incidence of infirmities, ib. Differences in age, 362-363. Inadequacy of nominal classifications which do not bear distinctly on profit and loss, 363. Illustration in the deceptive information that would be given by an arbitrary classification into "boys" and "men," 363-364. Utility of information illustrated by the case of orphans, who might be sent to the cheapest parishes, 364. No well-grounded plan of management frameable without obtaining such information, 364-365.

Pauper Relief—Table of cases calling for, explained, viii. 365.

Pauper non-adult value Table explained, viii. 365-368. Design—to exhibit the pecuniary value, negative and positive, (expenses and earnings,) of the service of a pauper, at and up to different ages from birth to twenty-one years, 365. Contents, 365-366. Inquiry where data may be found, 366-367. Utility of testing questions as to burthensomeness and productive labour arithmetically, according to value, 367. Vagueness of projects as to reduction or amplification of rates, &c., when formed without an estimate of the end to which they are the proposed means, 367-368.

Pauper Management Improved—Outline of a work to be called, viii. 369-439.

— — Political arrangements of, viii. 369-Vol. XI.

372. One central authority—joint stock,

369. Industry-houses, with each a portion of land, ib. Ways and means—average poor-rates, profits of industry, contingencies, donations, subscribed capital, produce of lands, 369-370. Constitution of Board of Directors, 370. Coercive powers—apprehension of vagrants, of parents of bastards, &c., ib. Powers for compulsory equitable purchase of lands, ib. *Obligations*—receiving all poor, infirm, &c., on condition of their agreeing to working out the cost, ib. To exercise coercive powers, 370-371. Obligations to rate-payers in respect to equitable adjustment of rates, 371. Application of industry-houses to collateral purposes, ib.

Restraints—against electioneering uses, ib. Pernicious speculation, ib. Applying capital to monopoly, ib. Against bubbles, ib. *Order of Dividends*—prevention of undue profit at injury of the public, 371-372. Provision for existing interests, 372. Director's oath—its substance, ib.

Pauper Management—System of separation and aggregation, according to, viii. 372-373. Purposes for which separation useful, 372. Purposes for which appropriate aggregation useful, ib. Means of separation, as applicable to the various ends—infirmaries, prevention of contamination indecency annoyance or violence, distinct education, &c., 372-373.

— — Size, number, and distribution of industry-houses for, viii. 373-374. Distribution, ib. Advantages to the country to have few houses on a large scale, 374. Advantage to Paupers to have many, ib. Just medium, ib.

— — Plan of an industry-house for, viii. 374-377. Objects—health, comfort, industry, morality, discipline, safety from fire, devotion, economy, 374-375. Shape, 375. Ventilation, 375-376. Arrangement of rooms—beds, &c., 376. Infirmary, 376-377.

— — Approach to industry-house, and outlying cottages, for purposes of, viii. 377-378.

— — Means of separation in, viii. 378-379. Panopticon or inspection system, ib.

— — Rough estimate of the expense of industry-houses on a large scale for, compared with a small scale, viii. 378-379 n.

— — Means of extension of accommodation for, viii. 379-380.

— — Managing-hands of, and their principles of management, viii. 380-381. Separation and aggregation, 380. Inspection, ib. Economy, &c., in the amplitude of the scale, ib. Adoption of best examples of management, ib. Book-keeping, ib. Uniformity, ib. Union of duty with interest, 380-381. Interest in preservation of lives, 381. Publicity, ib.

Pauper Management—Working-hands, or able-bodied inmates—Principles applied to, viii. 381-385. All-employment principle, or occupation of every one, capable of any sort of work, 381-382. Appropriate arrangement of employments, 382. Division of labour, *ib.* Interchange of employments, *ib.* Self-supply of articles employed on the premises, 382-383. Extraction of utmost amount of labour consistent with health, 383. No liberation till expense of keeping worked off, *ib.* Laziness put down by withholding the food till the work done, *ib.* Encouragement to industry by raising the remuneration with the character of the work, 383-384. Prizes—Competition—Inducements to exertion, 384. Separation as far as possible, that the individual merit of each worker may be noticed, *ib.* Fare to be of the least luxurious kind, so as to hold out no inducements, *ib.* Consideration for the habits of the old, *ib.* No fermented liquors, 384-385.

— — Dead stock employed in—Principles of economy applicable to, viii. 385. Wholesale Purchase, *ib.* Save all, *ib.*

— — as applicable to non-adult hands, viii. 385-386. Apprenticeship whenever they are old enough, 385. Cultivation of distinguishing natural faculties, *ib.* The children to be employed in instructing each other on the Lancastrian principle, *ib.* Indigenous promotion—officers chosen out of the paupers in the establishment, 385-386.

— — Official Establishment for the purposes of, viii. 386-387. Officers enumerated, 386. Generally and at the commencement, salary—to merge into contract system, *ib.* Powers and Restraints—Governor absolute, and the others responsible for those acts of his from which they do not dissent, veto of chaplain or surgeon in extreme cases, *ib.* Encouragements in the shape of honours and public emoluments on the officers who distinguish themselves, 386-387. Visitors—magistrates and clergy *ex officio*, 387.

— — Diet as a branch of, viii. 387-388. Preservation of life to be kept in view in new comers—habits acquired (to a certain extent) in the old, 387. Collection of statistics as to the effect of the number of meals per day on health, *ib.* Quality coarse—quantity unlimited, *ib.* How to manage with new-come adults, 388. With the old stagers, who have acquired pauperish habits, *ib.*

— — Clothing and bedding of the Paupers as a branch of, viii. 388-389. Clothing—Economy, uniformity, and hence uniforms, *ib.* Bedding materials, 389.

— — Employment as a branch of, viii.

389-391. The great difficulty in suiting it, is to find it for the unwilling and partially disabled, 389. Getting work which any one can do to a certain extent, 389-390. Taking advantage of local circumstances, *ib.* Pouring hands into over-paid employments, 390. Establishment supplying its own consumption, 391.

Pauper Management—Child-nursing as a branch of, viii. 391. Advantages to infants, from skill, attention, uniformity, salubrity, &c., *ib.*

— — Book-keeping as a branch of, viii. 391-394. Essential to right management and discharge of official obligations, 391. Keeps a hold of improvements invented, 391-392. Heads, the same as the principles of management—hence it becomes a history of the management, *ib.* Means of comparing the managements of the various establishments, *ib.* Importance of economy in minutiae when carried into the whole system, *ib.* Comparative or tabular book-keeping—not only as between time and time, but house and house, *ib.* From the inspection system, knowledge of the matters of fact easily acquired, 392-393. Distinctions—chronological and methodical—elementary and aggregate, 393. Division according to subjects—Population, Stock, Health, Behaviour, Correspondence, *ib.* Analysis of a Complaint-book as one of the Behaviour-books, 393-394. Merit-book, 394.

— — Appropriate establishments for the insane, the deaf and dumb, and the blind, as a branch of, viii. 394-395.

— — Pauper education as a branch of, viii. 395-397. Great influence that education of a portion of the poor would have over the whole mass, 395. Importance much overlooked, *ib.* The ends of such education with reference both to the pupils' interests and to those of the community, 395-396. Rules for a system of occupations, and for hitting the just proportions in labour, rest, exercise, and instruction, 396-397.

— — General view of the collateral benefits of, viii. 397. Employment, pecuniary assistance, protection from depredation, &c., *ib.*

— — Security of employment to the working-classes one of the collateral advantages of, viii. 397-401. Terms should be inferior to those of the average of free labour, and not such as to drain from it, 397-398. Preserving a supply of workmen, and a means of communication between employers and employed, 398. Employment Gazette and employment Register, *ib.* Mode of advertising detailed, 398-399. How the benefit to be given to the inhabitants of the industry-houses, 399. In

fluence on wages—steady, equalizing, preventing combinations, &c., *ib.* Use of Employment Gazette for other intelligence, 400. Promulgation of the information—use of the pulpit, *ib.* Composition with the revenue, 400-401.

Pauper Management—Extirpation of mendicity as a collateral benefit of, *viii.* 401-403. Industry—house not acceptable to beggars—therefore compulsion necessary, 401. Mischiefs of begging which justify compulsion—creation of painful feelings—impediments to industry—demoralization, *ib.* Power to apprehend without intervention of magistrate, 401-402. Discharge only on finding security to adopt employment, 402. Occupations which must be deemed a pretence for begging, *ib.* Inconvenience of punishing the givers of alms, *ib.* Ineffectual remedy by punishment under the vagrant act, 402-403. Insufficiency of cited acts sanctioning private bondage, *ib.*

— — Extirpation of habitual depredation as a collateral benefit of, *viii.* 403-406. Measures the same in kind as in the case of beggars, but more stringent, 403. Distinction between habitual practice, and proof of isolated act, 403-404. Proof from the person being unable to prove his employment, &c., 404. Heads of interrogation, *ib.* Disposal of the families of such classes, for the purpose of redeeming them, 404-405. Efficiency of the plan, 405. Ulterior securities against such classes by the registration of their names, &c., *ib.* Inaptitude of the vagrant act, 405-406.

— — Frugality assisted, as a collateral advantage of, *viii.* 407-417. List of exigencies operating as sources of demand for frugality, and of correspondent forms of supply, 407. Sources for laying up funds in store, with reference to habits during celibacy, and demands after marriage, 407-408. Difficulty of hoarding, 408. Plan of frugality banks, 408-417. See Frugality Banks.

— — Means of facilitating pecuniary remittances as a collateral advantage of, *viii.* 417.

— — Facilitation to the poor of conveyance from place to place as a collateral advantage, *viii.* 417-418. Frugality inns and conveyance stages, 417. Use in the case of the house poor, 417-418. Use to self-maintaining poor, 418. Use in the case of conveyance of criminals, *ib.*

— — Imprisonment rendered inexpensive and reformatory by—as a collateral advantage, *viii.* 418-419. Absence of the corruptive influences in prisons, *ib.*

— — Enforcement of domestic morality by, *viii.* 419-420. Classes to whom it

acts as a reformation house, 419. Refuge from domestic tyranny, *ib.* Residence there a certificate of good behaviour, 419-420. Through the Employment Gazette—premiums for good behaviour, *ib.*

Pauper Management—National force strengthened without expense—a collateral advantage of, *viii.* 420-421. Land force—training and officering a succedaneous corps, *ib.* Naval force—early exercise in the manoeuvres peculiar to, 421. The company's property suitable for the growth of naval timber, *ib.*

— — Rate of infant mortality diminished, as a collateral advantage of, *viii.* 421-424. Favourableness of the management to the economic preservation of life, 421-422. Superior position of the children to others of their class, 422. Inducement thus held out to the poor to board children in the industry-houses, or to bind them over as apprentices, 422-424.

— — Augmentation and dissemination of useful knowledge as a collateral advantage of, *viii.* 424-428. National field of observation and experiment, 424-425. Medicine and surgery, 425. Mechanics and chemistry, *ib.* Domestic economy, 425-426. Technical economy—management of manufactures, 426. Husbandry, including agriculture and gardening, *ib.* Meteorology, *ib.* Book-keeping, 427. Logic, *ib.* How the knowledge acquired would be disseminated when the inmates mix with the world, *ib.* Knowledge which might be specially disseminated among visitors—veterinary science especially, 427-428.

— — Assistance and direction of voluntary charity as a collateral advantage of, *viii.* 428-430. Trusteeship, 428. Would prevent beneficiary gifts to the poor from profiting only the rich, 428-429. Adaptation to extra comforts, when they are deserved, &c., 429-430.

— — Principle regulating the application of comforts in, *viii.* 430.

— — Comforts extended as a matter of course to all classes by, with their efficient causes, *viii.* 430-432. Health—diet, 430. Probability of long life—premiums for medical skill and efficiency, *ib.* Security from want, 430-431. Cleanliness and tidiness—the inspection principle, 431. Healthy employments, *ib.* Comfort in the sleeping arrangements, *ib.* Security from annoyance and oppression, *ib.* Sources of entertainment in the system of administration, *ib.* Good conscience in the absence of opportunity for crime, *ib.* Occasional faculty of visiting, and being visited by, friends, &c., 431-432. Prospect of melioration of fare

- from profitable exertion, 432. Tranquillity of mind from the regularity of arrangement—evils from perpetual change in the existing system, *ib.* and *n.* Preservation of any remnant of property, *ib.*
- Pauper Management**—Appropriate comforts extended by, to the feeble and infirm, deaf, dumb, blind, &c., with their efficient causes, viii. 432-433.
- — List of extra comforts to be extended by, to more or fewer, according to claims, means, and opportunities, viii. 433-434. General end, bringing them nearer the position of independent persons, and holding out inducements to merit, *ib.*
 - — Funds and grounds of title in regard to extra comforts, as sanctioned by, viii. 434-435. Chiefly remains of property, gifts, &c., *ib.*
 - — Condition of apprentices in point of comfort, on the system of, viii. 435-439. The same advantages which are held out to adults in respect to salubrity, sanatory regulations, training in good habits, &c., which the youth will profit by, though unconscious of, 435-436. Diet, 436. Absence of privations, and of the dread of them, *ib.* Recreation—bathing without danger, *ib.* Exemption from painful intellectual exertion, 437. Impediments to early matrimony removed, 437-438. Chance of advancement, 438. To females—security from seduction, and preparation for marriage, *ib.* Their lot compared with that of others of the same age, 439.
 - — Account of the circumstances in which the plan of, was prepared, xi. 102-103.
 - — The author's plan of, agreed to by Pitt, but negatived by George III., v. 422.
- Pauper manufacturers**—Proposal of public works for employment of, x. 85.
- Pauper systems compared, and Pauper management**—Projected works on, viii. 361-362.
- Paulw**—Cornelius, made citizen of France, x. 281.
- Pawnbroking**—Virtual usury sanctioned by the law in, iii. 13-14.
- Pawning**—The nature of, ii. 108.
- Pay**. *See* Emolument: Remuneration: Salary.
- of the army and navy—Provision for, in the Constitutional Code, ix. 371-381.
 - Soldiers'—Reasons why it cannot be made in money, ix. 354.
 - Extravagant, to public functionaries, has a tendency to make them idle, iv. 372-374.
- Paymaster of Forces**—Reform in the method of remunerating, ii. 209.
- Payment** may be a criterion of admission as a spectator to courts of justice, vi. 361.
- Wherein the act of, consists, i. 116 *n* ll.
- Payne Thomas**. His denial of the existence of the British Constitution, ii. 521.
- — casually noticed, iv. 457; x. 259, 281, 316, 512.
- Payne's Geometry**—Abbreviation employed in, viii. 171.
- Peace**—Plan for a universal and perpetual, ii. 546-560. Alleged impracticability combated, 546. Britain and France particularly interested, *ib.* Three objects—simplicity of Government, national frugality, and peace, *ib.* Propositions regarding Britain and France enumerated, with outline of the reasons, 546-547. Not their interest of either country to support colonies, with the reasons, 547-548. Not their interest of either to have any treaty of alliance offensive or defensive, 549. Not their interest to have any commercial treaty, 549-550. Not their interest to keep up a naval force beyond what is necessary against pirates, 550. Not their interest to keep up systems of distant preparation for a naval force, *ib.* Agreement between Britain and France would pave the way for universal peace, *ib.* Treaties limiting numbers of troops, to be formed for maintenance of the pacification, 550-552. Establishment of a common court of judicature for the decision of international differences, 552-554. Abolition of secrecy in negotiations in Britain, 554-560.
- a term taken from international to internal law for sinister purposes, v. 258.
 - Breach and disturbance of—vague use of the terms in indictments for sedition, &c., v. 258-259.
 - Security to keep the, i. 519-520.
 - Articles of, in religion, misnamed, ii. 265.
- Peace**—Justice of. *See* Justice of Peace.
- Peake** on Exclusion of Evidence, vii. 341.
- on Subpœnas, vi. 102 *n*.
 - noticed or quoted, vi. 6 *n*, 102 *n*, 137, 139, 140, 187; vii. 186-187 *n*, 340-341, 439 *n*, 475, 481.
- Pechell**—Mr, author of an Account of the Settlement of Bombay, x. 95.
- Peculation**—Nature of the offence of, i. 118.
- Illustrations of, in the case of unpaid gentlemen officials, iv. 130 *n*.
 - How far extent of salary a preservative from, ii. 234.
 - by architects and other superintendents—Remedy for, i. 547.
- Pecuniary bargains**—Exposure of the impolicy of restraints on, in Defence of Usury, iii. 1-29.
- Pecuniary competition** as a means of filling public offices—Considerations as to, in relation to the provisions in the Constitutional Code, v. 272-275.
- — as a means of appointing to office—The principle of, as an accompaniment to public examination, defended,

- ix. 286-293. In cases of simple trust, with security offered, must be unexceptionable to all parties, 286-287. Where talent necessary, the candidate must have the mental qualifications, 287. Consistency with expressed opinions of statesmen in favour of competition, *ib.* Opposed by sinister interest, *ib.* Gratuitous services exemplified—members of Parliament and Justices of Peace, 288. Objection answered, that timid merit would be excluded by the examination, 288-289.
- Objection, that it excludes the unopulent, answered—does not reduce the produce of the country, or shut up other methods of subsistence, 289-290. Objection, that it would establish venality—proceeds from confusion of ideas, which cleared by speaking of reduced salary instead of purchase, 290. Safeguards against purchase for corrupt purposes, *ib.* Objection answered, that it would exclude munificence and liberality—both evils, 290-291. Objection answered, that indigence will sharpen the disposition to commit depredation—the opulent more prone to do so than the indigent, and the protection in the securities, 291-292. Objection answered, that aptitude would be diminished—falls, instead of rising, with the amount of opulence, 292-293.
- Pecuniary circumstances—Influence of, on sensibility, i. 25-26.
- Pecuniary division of jurisdiction—viz., the allotment of cases of limited value to certain courts—its evils, iv. 333-334.
- Pecuniary forfeiture—Punishment by, i. 467-470. *See* Forfeiture.
- Pecuniary interest as a motive, i. 50.
- Pleasures and pains corresponding to, i. 198.
 - Power and continuity of, as a motive, iv. 128.
 - the only one of which lawyers will admit the influence, vi. 258, 475.
 - Exclusion of evidence on the ground of, considered, vi. 105, 154; vii. 397-400. *See* Interest.
 - How far its force is capable of measurement, vii. 568-569.
 - considered as a ground of untrustworthiness in testimony, vi. 156-160; vii. 573-575. Amount of the sum, to be considered along with the pecuniary circumstances of the individual, 573. Value of contingent sums according to nature of contingency, 574. Loss of a given sum greater effect than correspondent gain, 575.
- Pecuniary penalty—liable to be an inequitable punishment, i. 91.
- Pecuniary punishments—Frugality of, i. 404.
- Relation of, to taxation, i. 391.
- Pecuniary punishments—Inequality of, with illustrations from the Anglo-Saxon Laws, i. 399-400.
- Pecuniary remittances—Importance of facilitating, among the labouring classes, viii. 417.
- Pecuniary reputation—How far the preservation of, justifies restrictions on judicial publicity, vi. 363.
- Pecuniary rewards considered, ii. 217-218.
- to informers—Unpopularity of, ii. 222-223.
- Pecuniary satisfaction—the only kind considered in English law, i. 542.
- to the sufferers from offences—Principles of, i. 373.
 - Cases in which it must be inadequate, i. 375.
- Peel—Sir Robert—Character of, x. 570.
- Observations on his Bill for raising the salaries of the police magistrates, v. 328-348. *See* Magistrates.
 - His law reforms, vi. 202-203; vii. 214 n *.
 - His Jury Act criticised, in reference to the method of selection, ix. 281-282 n.
 - Casual notices of, ii. 14; iii. 375; v. 362, 365, 367, 372 n, 410 n, 545, 590; x. 551, 569-570, 587, 589, 594, 595, 596, 598; xi. 10, 37, 38.
- Peers—Prerogative of creating, as a means of corruption, iii. 546, 567-568 n, 591 n *.
- Limitation of the prerogative of creating, proposed, iii. 531.
 - Chambers of, and senates—Address to fellow-citizens of France against, iv. 420-450. General positions—That existing house of Peers should be discarded, and no senate substituted, 420. Enumeration of the subjects claiming attention, 420-421. *Case of the best species of second chamber*, viz., with Legislative power only, and chosen directly or indirectly by the people, 421-427. Onus of proving necessity thrown on defenders—necessity of a first chamber a postulate, 421-422. Needlessness—not required for affording suitable consideration to measures, nor for appropriate aptitude in members, 422.
 - Delay, involuntary and voluntary, *ib.* Measures that would have been carried, lost, because delay makes them useless, *ib.* Besides individual delay, general procrastination of all proceedings of the legislature, 423-425. This a useful instrument in the hands of sinister-interest for baffling reform, *ib.* Objection that minorities may beat majorities, 425-426. Contentions for power between the two chambers, 426. Complication in legislation, *ib.* No positive good done by a second, which may not be accomplished by a single chamber, 426-427. *Reasons in*

a *Report to the King of the Netherlands*, examined, 427-429. Spirit of monarchy, 427. Population, *ib.* Rank as a nation, *ib.* Diversity of the state and complicated interests, 427-428. Experience, 428. Avoidance of precipitation, *ib.* Obstacle to turbulence, *ib.* Protection to the throne, *ib.* Protection from exercise of usurped power, 428-429. Example of powerful monarchies and republics, 429. *Case where the second chamber is located solely by the king*, 429-432. The monarch's interest against his people, 430. The subserviency of the peers he will create to it, *ib.* Authority far greater than over disloceable representatives, *ib.* Disinterestedness and philanthropy not denied, but insufficient, *ib.* Illustration of the mischief kings will commit, illustrated in George III. 431. *Corruption unavoidable in the members of a second chamber*, 432-437. Corruption distinguished from delusion, 433. Sources of corruption, the administering good, or abstaining from inflicting evil—latter stronger than former, 433-434. Patronage, 434. More powerful than possession, as no necessary limit to amount, *ib.* General effect—Production of unmerited laudation of monarchy, 435. Holders of office for life not independent of the Crown influence, 436. Effect of wars and distant dependencies, *ib.* Sole remedy having members of legislature removeable by the people, 437. *Delusion contributory to maleficence*, 437-441. Dignity and lustre, 437. Honour and glory—still more mischievous, as connected with war and violence, 438. The excuse, moreover, for claiming public money to support them—Pensions, &c., 439. Aptitude inversely as the amount of all these advantages, 439-440. Influence—a term used to disguise corruption, 440. Genealogical dignity, 441. *Consequences of supreme judicial authority* being united with the Legislature, *ib.* *Duration of its authority* an objection to a second chamber, 442. Displays on popular side for securing a seat, and desertion when it is gained, *ib.* Though there be experience, no inducements to act on or cultivate it, *ib.* Such experience more needed by a first than a second chamber, *ib.* *Proper mode for location of a supreme judicial authority in France*, 442-445. A judge elected by chamber of deputies, 442-443. Appeal to chamber in case of criminal misdecision, *ib.* Compensation to a party so injured, *ib.* Reasons—The necessity of keeping the judicial authority from swerving from the rules of the Legislative, &c., 443-444. Reasons why the power cannot expediently be in other hands, 444-445. *Consequences of Executive authority being in the same hands with*

supreme legislative, 445. *Causes of attachment to a second chamber*, 445-448. English constitution, 445-446. Our prosperity, and comparatively good government, not from, but in spite of, a second chamber, 446. Revolution made three sets of Oppressors instead of the monarch solely, *ib.* Chief seat in the peers, *ib.* Example of America, which too nearly followed the practice of England, 446-447. *Buybears about democracy and anarchy*, 448-459. Mere words, to which America an answer, 449. Testimony to sincerity of William IV., 449-450.

Peers—House of—History of, adduced in illustration of the author's views of factitious honour, ix. 79.

— Mischievous effect of judges having seats in the House of, iv. 380-381.

— Proposal for judicial powers of, being committed to a court of Lords' Delegates, v. 55-60.

— House of, for Spain—Tract on the proposed, viii. 468-470.

— See Lords; Aristocracy.

Peerage—Nature of suit, claiming a, ii. 83. The expensiveness of, as a reward, ii. 201, 220.

— Dormant. Practice connected with claim for a, ii. 220.

— Disclamation of a wish to extinguish the, iii. 411.

— as an instrument of corruption, iii. 412-443.

— Mischievous nature of the privileges of the, iv. 321.

Pelham—Lord—Letters to, titled "Panopticon *versus* New South Wales," iv. 173-248.

— Letter from, to Sir C. Bunbury on the Panopticon Penitentiary project; and letter from Bentham to Sir C. Bunbury, criticising Lord Pelham's, xi. 123-127.

— Remarks on his conduct regarding the Panopticon, in letters to Dumont, Sir S. Romilly, Sir C. Bunbury, Charles Abbot, &c., xi. 127-144.

— casually noticed, x. 391-394, 397; xi. 120, 122, 128, 132, 133.

Pelham—Mr. His conversion of the 4 into 3 per cents. noticed, and compared with the operation of the project of Note Annuities, iii. 114, 138 n, 141-144.

— noticed, x. 362.

Pells—Clerk of the—an illustration of barbarous nomenclature, viii. 71 n.

Pell's office—Antiquated and barbarous mode of keeping accounts in, ix. 252 n.

Peltier, noticed, x. 390.

Pembroke—Henry Herbert (tenth) Earl of—Notice of, x. 122.

Pembroke—Lady—Notice of, as a visiter at Bowood, x. 122.

Pen—Analogical punishment by, i. 408.

Penal causes—distinguished from non-penal, vii. 6 n.

Penal causes have a peculiar claim for recordation, vi. 412.

- — Extraction of Evidence in, vi. 471-479. *See* Extraction.
- Penal Code. Plan of, iii. 163.
- — Division and subdivisions of offences in, iii. 163-171. *See* Offences.
- — Titles of the, iii. 174-176.
- — Specimen of a, i. 164-168.
- — Source of the reasons that should accompany, i. 162.
- — The counterpart of the civil, as containing sanctions for the rights defined by it, ix. 12.
- Penal colonies—Transportation to, i. 490-497. *See* Transportation.
- — System of, discussed in Panopticon *r.* New South Wales, iv. 173-248. *See* Transportation.
- Penal judicatory—Legislation, in the Constitutional Code, for trial of high offenders, ix. 188-190. *See* Legislature.
- Penal law—Limits of the Branch, termed, i. 142-154.
- — Principles of, i. 367 *et seq.* *See* Offences: Panopticon: Punishment: Satisfaction.
- — Amelioration of, urged in place of its weak enforcement, vii. 260.
- — View of the principal facts to which evidence applies in, vi. 215.
- — Counteraction as to, between legislator and judge, the former creating, latter neutralising, vi. 378 n.
- — Use of registration of genealogical facts (*viz.* births, deaths, and marriages) to, vi. 571-573.
- — Defects of, illustrated in the exclusion of criminative evidence, vii. 318-319.
- — Position of, in a general division of the law, ix. 8.
- — Prescription, or bearing of, to the Constitutional Code, ix. 36-40. The prerogative of mercy an instrument in the hands of tyranny—predicates injustice, 36-37. Conspiracy a creature of monarchy, which has no existence in a democracy, 37-38. The same as to the severities of Treason law, 38. These severities the consciousness of a sinister interest adverse to that of the body of the people, 38-39.
- — Expository matter peculiarly essential to, iv. 451.
- — whether it can be brought advantageously to bear on official deportment, ix. 307-309.
- — Proper principles of, in relation to the Constitutional Code, ix. 22-25. Punishment to be viewed simply as the means of enforcing the Civil code, 22-23. Compared to surgical operation—good should always be the object, 23. Hence the

barbarism of expressions about punishment being deserved, &c., *ib.* Avoidance of principle of vengeance, *ib.* Adoption of principle of compensation, *ib.* How far satisfaction as distinct from compensation, capable of application, 23-24. Barbarism of calling punishment “visitation,” 24. Cases where punishment not to be applied—where it would be groundless, where needless, where inefficacious, where unprofitable, 24-25. Rules tending to augmentation and diminution of punishment, 25.

Penal legislation, divided into direct and indirect, i. 533.

Penal remedies against offences—Nature of, i. 367.

Penal and non-penal—Suits divided into, ii. 80.

Penal and civil law—how far capable of demarcation, i. 152-153.

- — suits—Analogy between the instruments of procedure in relation to, ii. 16-17.

- — Code. Relation between The, iii. 160-161.

Penalties to the revenue—should be postponed to compensation to injured party, i. 338.

- How they may operate as taxed licenses, i. 391, 399-400.

- Adjustment of, to pecuniary means of party, iii. 360, 426.

Penance, as conditional in excommunication, i. 511.

- in relation to procedure of ecclesiastical courts—a contrivance for exercising judicial power, i. 515, v. 485, vi. 494 n.

Pendock and Mackendar—Case of, cited, i. 488.

Penitential inculpativ evidence—Nature of, as compared with other species of confessorial evidence, vii. 33.

Penitentiary House—Application of the Panopticon Inspection Principle to a, i. 498-503; iv. 37-248. *See* Panopticon.

- — The defective nature of the existing, i. 246.

- — The Government—Incompatibility of the board management established in, with economy and good management, iv. 125-134.

- — Competition for plan of a, ii. 229.

Penitentiary system—Prejudices against, as a punishment, on the ground of liberty, i. 411.

- — First patrons of, Blackstone and Eden, i. 255.

- — The illustrations of the, of America, contrasted with the Penal colony system, iv. 212-248.

- — Its superiority to other methods of punishment, not only in reformation but example, iv. 242-245.

Pensions—The various kinds of, and their nature as extravasated reward, ix. 270.

— Compensation on the abolition of, i. 320-321.

— Support of decayed aristocracy by, attacked, v. 305-307.

— as an instrument of corruption, iii. 567-568 n.

— Political. The objects of granting characterized, ii. 384-385.

— The argument against their abolition, from the smallness of their proportion to the national expenditure, combated, v. 303-305.

— in England compared with those in France before the Revolution, ii. 221.

Pensions of retreat—Reasons in favour of, in the military department, not applicable to the civil, ix. 373-374.

— — — Difference of opinion with Dumont upon, ii. 191.

— — — Evil effects of, in the case of judges, iv. 361, n. †.

— — — Opinion against, in Constitutional Code, ix. 31-32.

— — — Opinion of, in the provisions for official remuneration in the Constitutional Code, ix. 269.

— — — attacked, x. 584.

Pension list—Uncandid to say the public have a control over the, v. 307.

— — an aristocratic pauper list, v. 269.

Pennsylvania—Adoption of the Penitentiary system in, and its operation, i. 502; iv. 212.

— Hard labour first adopted as a punishment in, iv. 212-213.

— Qualifications for the suffrage in, iii. 612.

— Proposal to prepare a code for, iv. 468-475.

People—The. Sense in which the term is used, ix. 97.

— — Confidence of, secured by legislative publicity, ii. 310-311.

— — Personal intercourse of a sovereign with, increases his power, i. 574.

— — Cases in which they have shown themselves more desirous for war than their rulers, ii. 559.

— — The irrational passions of, chargeable with the jobbing of their rulers, ii. 202.

— — Fault of, more in insensibility to grievances than groundless clamour, ii. 432.

— — Fallacies as to acts of sovereignty springing from the, ii. 504-505. Can be said to do so only in so far as there is a habit of obedience on the part of the people, ib.

— — Lukewarm patience, rather than discontent, the characteristic fault of, iii. 445.

— — Their partiality to the aristocracy illustrated in elections, iii. 468-470.

— — Education of, opposed by those who complain of their ignorance, iii. 471-472, 474-475.

People—The, have no interest in a general division of property, iii. 475.

— — have their backbiters and enemies like individuals, iv. 359.

— — Independence of, on the part of judges or other magistrates, is despotism, iv. 362.

— — Injustice and capriciousness of, exaggerated, iv. 363.

— — their knowledge of the evils of the legal system checked by the use of technical language, vii. 280-281.

— — Intellectual faculties of, corrupted through legal fictions, vii. 287, 436.

— — their faculties depraved by the subtleties of lawyers, vii. 204-205.

— — Their capacity to act for themselves in choosing legislators, ix. 97.

— — Reasons for the supreme constitutive of a free state being in, ix. 98-101.

— — Sovereignty in, by the Constitutional Code, ix. 153.

— — The kind of virtue that is to be expected in the body of, x. 72.

— — Adopting the wishes of, should mean the wishes of the largest proportion, but is often applied to a small number, x. 496.

— — The enemies of—Two classes of, x. 581.

Perceptible entities, viii. 195. *See* Entities. Perception as a mental operation of logic, viii. 224.

— a faculty of mind necessary to the teacher and the learner, viii. 76.

— a source of testimony, vi. 18.

— Nearness to, or remoteness from the seat of, as affecting evidence, vi. 15.

— never err, though judgment in acting upon it may, viii. 321.

Perceptions—Consideration as to whether they are real entities, viii. 196.

— divided into pathematic and apathematic, viii. 279.

Perceptive faculties—Application of methodisation to the assistance of the, viii. 272.

— — Relation of, to actions, i. 43-46. *See* Consciousness.

Perceval—Spencer. His prosecution of Cobbett, adduced as illustrating the state of Libel Law, v. 106-114.

Percepting and deposing witnesses distinguished, vi. 222; vii. 130.

— — noticed, ii. 463 n^a; v. 159, 181, 184, 289 n, 316; x. 457, 463.

Perfect-performance-exaction principle in the management of the Chrestomathic school, viii. 50.

Perfectibility of human nature—Opinions entertained regarding, i. 193-194.

Perfection—The charge of aiming at, brought against those who urge improvement, ii. 462.

Periodical outset Books, for the registration of official operations, by Constitutional Code, described, ix. 234.

Periodicals—Power of, in the proportion of the frequency of their recurrence, xi. 18.

Perjury—Definition of, v. 191 ; vi. 222.

- an offence of falsehood, i. 104-105.
- in the course of a suit—Method of dealing with, ii. 82.
- inculcated at Oxford, ii. 210.
- Illustrations of, from oaths in the universities, particularly with reference to the Oxford statutes, v. 209-219.
- Extracts from the statutes of the University of Oxford, concerning, v. 224-226.
- Abstinence from, not within the religious freedom sanctioned at the universities, v. 216-217.
- Succedaneum for the punishment of—punishment of mendacity according to its mischievousness, v. 220-221.
- Inefficiency of the punishment of, to check the accuracy of sworn surveys, v. 326.
- exculpativè, common, criminative uncommon, vi. 155. vii. 521-522.
- Use of a collection of cases of, with nature of each falsehood told, vi. 246.
- Instances in which it has been supported by the religious sanction, vi. 271.
- Singular rules of Hindoo law as to, vi. 271-272, 324.
- Absurdity of punishment for, instead of for the evil committed through it, vi. 297 ; vii. 406-407 n *.
- Roman and French law of, in regard to securities for truth, vi. 302-303.
- a necessary ingredient of jury-trial in England, vi. 314.
- Fear of, alleged reason for not counter-evidence in equity causes, vi. 374.
- The necessary ingredients in, according to English law, vi. 381, note 5.
- Murder accomplished through—Barbarous method of dealing with, by English practice, vi. 384, 382 note 8.
- Prosecution of, witness for, at public expense, vi. 382 note 11.
- Indictment for, precludes amendment in equity, vi. 455.
- Punishment for, the only check in England on falsehood in affidavit, vi. 460.
- Judges treating as a joke, vi. 465.
- nourished by the system of affidavit evidence, vi. 497.
- Conviction of, no good ground for excluding a witness, though a proper ground of suspicion, i. 486-489 ; vii. 406-409.
- Danger of, the argument for exclusion—would apply most strongly to the best evidence, vii. 482.
- in the case of an extraneous witness, must almost always be attended by subornation, vii. 408.
- Person convicted of, should be examined

- as to the conviction, instead of being rejected as a witness, vii. 409-410.

Perjury—The ancient law as to, vii. 461-462.

- Feebleness of the remedies against, to the injured party, vii. 488-489.
- Effect that the commission of, by a witness, should have on the weight of his testimony, vii. 587-589.
- Substitutes for punishment of, in proposed Dispatch Court, iii. 416, 417.
- See OATH.

Perkins—Case of, cited, vi. 389.

Permanence as an internal security for evidence for ulterior use, vi. 283, 289-290.

- a check on the judge in the case of evidence adjudicated upon in appeals, vi. 291.
- of evidence—writing necessary to, vi. 328.

Permanent evidence compared with unpermanant, vi. 170-171.

Perpetual motion—Search after, an illustration of the delusions of ignorance, viii. 13.

- — Observations on the various efforts to achieve, and the mechanical impediments to it, viii. 147-148.

Perplexity—Fallacies employed for the purpose of creating, in discussion, ii. 436-474.

Perquisites—Official. Evils of, ii. 241.

Perry and Lambert—King against, cited, v. 243, 481.

Persecution—Religious—Disposition exhibited in, i. 64.

- — an instance of interference of law where it ought not to act, i. 147.
- — Effect of, against religion, v. 374.
- — A testimony in favour of the religion of the persecuted, iv. 398 n.

Persians—Emblematic punishment among the, i. 461 n *.

Person—A man's inalienable property in his, according to Sieyès, considered, ii. 531-532.

- The, as an object of security by the law, iii. 213.
- Seizure or arrestation of the. When, and on what conditions, it may take place, ii. 116-117.
- Security for the. Axioms of mental pathology applicable to, iii. 225-227.
- Laws for the protection of the—Place they should occupy in the Universal Code, iii. 162.
- Offences against the, a division of private offences, i. 99-100.
- Offences against the, a subdivision of private offences, iii. 164.
- Offences against the—Genera of, i. 113-115. Nine kinds enumerated, ib.
- and Property—Offences against, i. 100-119.
- and Property—Offences against, iii. 166, 168. As a subdivision of private offences, 166. As a subdivision of self-regarding offences, 168. As a subdivision of semi-public offences, ib.

Person and reputation—Offences against, i. 100, 118-119.
 — and reputation—Considerations as to time and place with regard to offences against, i. 176.
 — and reputation—Subdivisions of offences against, iii. 165, 168; subdivision of private, 165; subdivision of self-regarding, 168; subdivision of semi-public, ib.
 Persons—Functions regarding, vested in the Ministers collectively, by the Constitutional Code, ix. 224-225.
 — and things—Confused division of rights of, in Roman law, iii. 184.
 — in the grammar of verbs—meaning of the term, viii. 349.
 Personal attendance of parties in courts of justice—Purposes served by, ii. 34-35.
 — of defendant—Its uses, ii. 78.
 Personal evidence compared with real, vi. 173-174, 218.
 Personal and real property—a factitious distinction, vi. 543. *See* Real and Personal.
 Personal oral evidence—Authentication with reference to, vii. 174-175.
 Personal injuries—Pecuniary satisfaction for, i. 373. *See* Person.
 Personal interest—Reason why dyslogistic appellatives given to the motives founded on, i. 212.
 Personal Stock Book, in the system of official registration, in the Constitutional Code, ix. 236-237, 242, 216-247.
 Personalities—a form of inconvenience in political assemblies, ii. 303.
 — Laudatory—Fallacies of, ii. 412-413.
 — Vituperative—Fallacies of, ii. 413-418. *See* Vituperative.
 — Ease with which they can be employed, ii. 417.
 Personation—an offence of falsehood, and a species of mendacity, i. 104-105; vi. 292n, 381 n 4.
 Perspicuity in the language of the laws—Considerations as to, x. 71.
 Persuasion—Meaning of the term, vi. 229.
 — Degrees of—how expressible for the purpose of judicial decision, vi. 16-17.
 — Degrees of—Expression of, conveyed in the words improbability and impossibility, vii. 76-79.
 — Difference between, in the case of individual fact-, and species of facts, vii. 83-84.
 — affirmative and disaffirmative—Foundation of, vi. 18.
 — and probative force—Degrees of, how measured, vi. 223-235.
 Peru—an instance of the extent civilisation may reach without writing, vi. 329.
 — Account of the constitution of, by General Miller, xi. 16.
 Pestalozzi—Henry, made citizen of France, x. 281.

Peter the Great—Observations on his forcible alteration of costume, i. 183.
 — — The achievements of, noticed, i. 178.
 — — Civilizing efforts of, i. 541, 564.
 Petersburg—St. Notes by Dumont at, x. 405-406.
 Petit jury. *See* Jury.
Petitio principii—The power of, in debate, vii. 451-552.
 Petition of Right—Violation of, charged against the method of governing New South Wales, iv. 249-284.
 Petition in bankruptcy makes the evidence of a party be taken, vi. 488-489.
 Petitions to Parliament—Method of introducing, at public meetings, ii. 354 n.
 — What reference Nomography, or the art of inditing laws has to, iii. 235.
 — Effect of intimidation in deterring people from signing, iii. 485.
 — to Parliament—Arrangements for obtaining signatures to, v. 439-440.
 — Plan for suppressing publicity to, in the arrangements for printing the papers of the Commons, iii. 536-538.
 Petitions—Justice and Codification, v. 437-513; —
 — — — Advertisement and description of, v. 138-440. Analysis, 438. Reasons for having them at length and abridged, ib. Connexion of codification, 439. Arrangements for obtaining signatures, 439-440.
 — — — Preliminary explanations as to, v. 440-444. Operation and results of abridgment, 440-441. Alternatives to the friends of the cause, 441-442. Reasons for not using abridged Petition solely, 442. Advantages of numeration of paragraphs, 442-444.
 Petty Lord Henry—Remarks of, on fees to auditors of public accounts, vii. 200 n 1.
 — — — Notices of, x. 378, 382, 383, 414, 422, 423-425, 433; xi. 131.
 Petty bag—Secretary of the an illustration of barbarous nomenclature, viii. 71 n.
 Phanerodynamic Anthropurgies, or Mechanical Philosophy—Position of, in the Encyclopedical Sketch of Art and Science, viii. 87.
 Phenomena—Influence which a knowledge of the course of nature has on belief in, vii. 91-98.
 — of the human mind—Analytical view of the, viii. 279.
 Philadelphia—The Penitentiary system, as adopted in, i. 502; iv. 216-217, 235-237, 238-240, 242-244.
 Philanthropy—Nature of, i. 53.
 — Existence of, not denied, but not to be trusted to as a sufficient motive for good government, iv. 431.
 Philips Constantia—Account of proceed-

- ings in Chancery quoted from, vii. 219-220 n.
- Phillips—Constantia—Memoirs of. Circumstances under which they fell under Bentham's notice, and their influence, x. 35, 77-78.
- Phillips *r.* Fowler—Case of, cited, vi. 226 n*.
- Phillip II. of Spain influenced by the religious sanction, i. 566.
- Phillips—Sir John—Support of Annual Parliaments by, iii. 455-456 n.
- Phillips—Sir Richard, quoted on the Packing of juries, v. 66, 67, 79, 80, 82.
- — — Character of, and anomalous position as a Reforming Sheriff of London, v. 119-120, 140, 158, 178.
- — — Letter to Chief Baron Macdonald on the Packing of juries in the Court of Exchequer, with the Chief Baron's answer, and a commentary, v. 121-130.
- — — Letter to, by a Templar, on the Packing of Special juries, with comment, v. 143-146.
- — — Letter, to, by a member of Lincoln's Inn, on *do. do.*, with comments, v. 147-153.
- — — His attempt at the Remembrancer's office to get juries struck according to the act, v. 155-156.
- — — His efforts for the enforcement of the act for the release of prisoners against whom no bill is found, v. 179-180.
- Phillips on evidence referred to, vi. 397; vii. 143, 159, 170-174, 353, 400-409, 498, 551-558.
- Philosopher's stone—an illustration of the delusions of ignorance, viii. 13.
- — — Good things discovered in the search for, viii. 231.
- Philosophy—How far asceticism has been cultivated by, i. 4-5.
- Ancient—spoken of as the philosophy of words, x. 77.
- Natural—an illustration of unapt nomenclature, viii. 69.
- Natural—stage it should occupy in education, viii. 15.
- Phrenology alluded to, vii. 433-434; viii. 537.
- Phryne—Case of, cited, vii. 432.
- Phthisozoics, or the art of destroying noxious animals—Place of, in the Chrestomathic system of Instruction, viii. 36.
- Physic. *See* Medicine.
- Physical analysis—precedes logical in the history of the progress of the mind, viii. 121-122.
- Physical circumstances—Influence of, on national character, i. 177.
- Physical economics—Place of, in the Chrestomathic system of Instruction, viii. 35.
- Physical entities, logical use of distinguishing from Psychological, iii. 286.
- Physical force—an element necessary to the existence of government, ix. 47.
- Physical and psychological facts distinguished, vi. 216-217.
- Physical impossibility—Questions as to verbal import confounded with, vii. 76-82.
- Physical impracticability defined, vi. 328 n†.
- Physical kingdoms—The three. Subalternation and physical division as applicable to, viii. 268-269.
- Physical power of injuring—Methods of taking away the, i. 534-536.
- Physical sanction—its effect on evidence, vi. 19, 260-261, 262-264. *See* Sanction.
- — — Definition of the, i. 14.
- — — Source and direction of the, iii. 290.
- Physicians—might be employed as temporary recorders, vi. 81.
- Physico-Theology. Advantage of instruction in, viii. 427.
- Physiology—Etymology of, and place in the Chrestomathic system of Education, viii. 36.
- Physioplactic Somatics—proposed as a nomenclature instead of Natural history, viii. 284-285.
- Physiurgic Somatology, or Natural history—Place of, in the Encyclopedical Sketch of Art and Science, viii. 86.
- — — Division of, into Uranoscopic, (or heaven-regarding), and Epigeoscopic, (or things-on-earth-regarding,) viii. 86.
- Pieardy—Practice of the Provincial Assembly of, noticed, ii. 344.
- Pictet—Professor, of Geneva, noticed, xi. 122.
- Piety—The pleasures of, i. 18.
- The pains of, i. 20.
- devotion, &c., as designative of motives, i. 201.
- Pigot—Lord—The inquiry into his conduct as Governor of Madras, noticed, x. 60.
- Pillans—James, Rector of High School, Edinburgh—Letter from, on the success of the monitorial system in that school, viii. 59-61.
- Pillory—Punishment of the—its incidence and effect, i. 417-418, 461; vi. 134, 297. Abolished, vi. 297 n.
- Pinchbeck—Mr, an artist, noticed, xi. 97.
- Pious frauds—Interests producing, vii. 572 n.
- Pious uses—Moveable succession diverted to, ii. 596.
- Pipe—Clerk of the, an illustration of barbarous nomenclature, viii. 71 n.
- Pitt—Moreton—Letter to, x. 345-346.
- — — noticed, x. 51; xi. 118, 163-164.
- Pitt—William, senior, (Lord Chatham)—Account of his negotiations with Lord Shelburne, x. 101.
- — — His connexion with Frederick the Great, x. 94.
- — — His destruction of a French fleet on the Portuguese coast, x. 205-206.

- Pitt—William, senior, (Lord Chatham)—casually noticed, iii. 439 n, 517 n, 531.
- Pitt—William, junior—His opening contracts and loans to free competition, ii. 228 n †.
- His reform of the Custom-house fees system, ii. 244.
 - Establishment of the Sinking Fund by, ii. 312.
 - contemplated a plan of communication across the isthmus of Darien, ii. 561.
 - His anxiety to get the Panopticon plan adopted, iv. 171.
 - The merit of his alteration of the method of leasing the Crown lands considered, v. 325-328.
 - His conduct in relation to the Panopticon Penitentiary, xi. 105-143.
 - His adoption of the author's views on the Poor Law, v. 422.
 - Poor Law Bill introduced by, criticised, viii. 440-461.
 - The morality of his running in debt considered, v. 318-322. Incurred to tradesmen under the profession that he would pay them, which he could not do, ib.
 - His delivering testimony at Tooke's trial, noticed, vii. 251.
 - Character of, as a minister, x. 308.
 - Account of, as a visiter at Bowood, x. 100, 102, 104, 105, 111, 112, 118-119.
 - Casually noticed, ii. 582, 585; iii. 83 n*, 435, 443 n, 484, 501, 517 n; iv. 197 n, 263, 268 n; v. 325; viii. 419, 469; ix. 607; x. 51, 59, 167, 252, 258, 263, 291, 295, 301, 302, 333, 334, 335, 358, 362, 363, 366, 373, 385, 391-394, 415, 428, 434, 458, 565; xi. 75, 100, 103, 105, 112, 113, 114, 118, 122, 127, 129, 130, 137, 138, 139, 163.
- Pity—Nature of, i. 53.
- Regulation and exercise of the sentiment of, i. 562-563.
 - compassion, &c., as designative of motives, i. 202.
- Place—a physical fictitious entity, viii. 189-200.
- The most extensive fictitious entity connected with relation, viii. 203.
 - How a conception formed of the species of relation formed by, viii. 203-204.
 - considered as one of the predicaments, viii. 235.
 - Sciences involving the predicament of, viii. 286.
 - Influence of, in matters of Legislation, i. 170-188. *See* Transplanting.
 - Particularity as to, in instruments of accusation, vii. 38.
- Place. *See* Office.
- Places and pensions—Compensation on the abolition of, i. 320-321.
- Places—as a general title of the Civil Code, iii. 178.
- Place-capturing principle—in the management of the Chrestomathic School, viii. 48, 51.
- Placement—Exclusion of, from votes in Parliament, iii. 456-457, 567-568 n.
- Proposal that they should have seats in Parliament, but not votes, iii. 490-495, 541-542.
 - Exclusion of the votes of—a reform opposed by Whigs as well as Tories, iii. 531-532.
 - Exclusion of votes of—Provision for, in Reform Catechism, iii. 540-542.
 - Number of, on divisions—Utility of ascertaining, iii. 497.
- Plague—Peculiar classes of offences liable to be committed in the countries subject to the, i. 174.
- Mitigation of the evils of quarantine in case of, iv. 119 n.
- Plaintiff—Definition of a, iii. 410.
- The legal service required by, from the judge, vi. 8, 210.
 - Effect of depriving him of evidence by the system of exclusion, vi. 86-87.
 - Deficiency of evidence on his side producing nonsuit, and its effects, vi. 104.
 - False testimony by, in his own favour, more dangerous than by defendant, vi. 156-157.
 - Propriety of his being entitled to examine witnesses and parties, and of his liability to such examination in his own person, discussed, vi. 334-345. *See* Interrogation.
 - How far the position of, gives greater facilities to unjust demands, than that of defendant, vi. 433.
 - Functions, for the performance of which his presence requisite in court, vii. 228-229.
 - Suit proposed to be commenced by, with instrument of demand, vii. 270-271.
 - should not have judgment by default, unless he produce evidence, vii. 547.
 - Mischief of misdecision against, as compared with misdecision against defendant, vii. 591-593.
 - Testimony of—The course pursued in regard to, by English law, vii. 489-496;—
 - In what cases his testimony is receivable in his own behalf, vii. 489-494. Criminal cases, 489-490. Motion for attachment, 490. Exclusion in cases where prosecutor rewarded, 490-492. Case of a traveller suing the hundred, 492. Admittance of plaintiff's testimony to the effect of giving commencement to a suit in equity, 492-493.
 - In what cases his testimony compellable

at instance of defendant, vii. 494-496.
 Inconsistencies of English law, in criminal, common-law, and equity procedure, ib.
 Plaintiff—Effect of law taxes on, ii. 577.
 — When more than one on the same side
 — Exclusion of the evidence of, for and against each other, vii. 507-509.
 Plasioscopic Nology, or Logic—Position of, in the Encyclopedical Sketch of Art and Science, viii. 91.
 Plaster—Use of, for the flooring of prisons, urged, iv. 98.
 Plato—The philosophy of, characterized, viii. 120.
 — noticed, viii. 83 n, 267.
 Platt—Mr, noticed, v. 359.
 Playfair—Mr, recommends a person for Bentham to take to Russia, x. 149.
Plea for the Constitution—an Exposure of the illegalities committed in the government of New South Wales, &c., iv. 249-284. See New South Wales.
 — — Correspondence with Sir Samuel Romilly, Sir Joseph Jekyll, and Sir Charles Bunbury, as to publishing, xi. 144-145.
 Plea of guilty—Recommendations by judges to withdraw, criticised, vi. 473.
 — in civil action, vi. 480. See Pleading.
 Pleas—Common. See Common Pleas.
 Pleadars—Special—considered as redundant judiciary assistants, ix. 462.
 Pleading—English system of—its evils, ii. 48-49.
 — and evidence—False distinction between; pleading the evidence of an interested witness, v. 451, 509; vi. 22; vii. 266-267, 364.
 — rendered conclusive evidence through means of judgment by default, vi. 22-23; vii. 545-547.
 — Modifications of, in use in English practice, vii. 273-274. Declaration and plea at common law, ib. Bill in equity, 274.
 — Idea of a system of, adapted to the ends of justice, vii. 270-272. Instrument of demand, with its heads, 270-271. Preliminary meeting would prevent the falsehoods of written pleadings, 272.
 — *Viva voce*, compared with written, vi. 26.
 — Interests that have regulated the system of, vi. 479.
 Pleading—Special—Abolition of, recommended, vii. 325-326.
 — — A device of Technical procedure, v. 11.
 Pleadings—Written—The pretended use of, (viz., certainty,) considered, vii. 275-279. The certainty mendacious, 275-277. The titles under which a claim may be made, 278. Variety of counts, 279.
 — — Uses of, with the other devices, to judges and lawyers, vii. 274-275.

Pleadings—Written—Superabundance of, charged in Petitions for justice, as a device of the Technical system, v. 449-451, 509-510.
 — — Superabundance of, in England, ii. 174.
 — — Special superabundance of, in Scotland, when the work on Scotch Reform was written, v. 27-29.
 — — Use of a foreign language in—a device of the Technical system, v. 448-449, 509.
 PLEASURE—Ingredients in the value of a, i. 206.
 — Synonyms of the word, i. 205.
 — a motive correspondent to every species of, vi. 257-258.
 Pleasures—Compound, exemplified, i. 210.
 — Influence of the desire of, on criminals, i. 446, 450.
 — Unmanageability of, in the hands of Government, ii. 197.
 Pleasures and pains—Mankind governed by, i. 1.
 — — — The four sanctions as the source of, i. 14-15. See Sanctions.
 — — — Value of a lot of—how to be measured, i. 15-17. Intensity, duration, certainty, propinquity, fecundity, purity, ib.
 — — — Simple and compound, i. 207.
 — — — The kinds of, i. 17-21. The pleasures of sense, 17-18; of wealth, 18; of skill, ib.; of amity, or self-recommendation, ib.; of a good name, ib.; of power, ib.; of piety, ib.; of benevolence, ib.; of malevolence, ib.; of memory, ib.; of the imagination, ib.; of expectation, 19; of association, ib.; of relief, ib. The various kinds of pain, 18-20. (See Pain.) Extra-regarding and self-regarding pleasures and pains, 20-21.
 — — — Amount of either from any given cause dependent on amount of sensibility, i. 21.
 — — — Specimen of analyzation of the complex into the simple, i. 21 n †.
 — — — the only elements of good and evil, i. 48.
 — — — as the source of motives, vii. 393.
 — — — The operation of, in creating motives, i. 209.
 — — — Catalogue of motives corresponding to, i. 49-56.
 — — — Balance of, to be considered, in estimating certain actions as crimes, i. 81-83.
 — — — with their correspondent interests and motives, in the table of the Springs of Action, i. 197-205.
 — — — Extent of their influence on human actions, i. 206.
 — — — the source of all Psychological entities, i. 211.

Pleasures and pains—Goodness and badness of actions founded on, i. 214-216.
 — — — the only consequences men are interested in, in laws, i. 238.
 — — — Operations of the legislator in regard to, compared with those of the physician, iii. 224.
 — — — Relation between the word happiness and, iii. 286.
 — — — Elements of value in regard to—Uses of the discovery of, iii. 286-287.
 — — — The operation^t of the several sanctions in relation to, iii. 290-292.
 — — — Taking an estimate of, for framing the Rationale of a Code of Laws on Utilitarian principles, iv. 540-543.
 — — — List of the principal, which act as sources of interest in testimony, vii. 567.
 — — — Pecuniary interest and aversion to labour, the only elements of, that admit of measurement for judicial purposes, vii. 568.
 — — — Sketch of a subdivision of the sources of, with the view of filling up an Encyclopedical analysis, vii. 89-90.
 — — — as the source of Political effects and causes, viii. 206.
 — — — as the source of the appetitive faculty the originator of all mental operations, viii. 279-280.
 — — — Instruments of, employed in the Constitutional Code, ix. 150-151.
 — — — Laws a matter of, x. 85.
 — — — Relation of emotion, affection, passion, and humour to, x. 509-510.
 Pledge—Judicial security effected by means of, ii. 108-110.
 Pledges of prosecution—Sham, in English practice, vii. 284-285.
 Plenipotentiary—Rank of, as a foreign minister, ix. 228.
 Plink's *Elementa Medicinæ et Chirurgiæ Forensis*—Table of facts as to the human body, translated from, vii. 9.
 Pliny noticed, vii. 89; xi. 97.
 Plomer—Mr, Member for Hertfordshire—Allusion to, x. 577.
 Plowden, the institutionalist, noticed, vi. 205; vii. 393, 597.
 Plowden—Richard and James—Account of, x. 426-427.
 Plowden's History of Ireland—referred to on the Volunteer Association, iii. 618.
 Plowdens of Yewhurst—Notice of the, x. 48.
 Plumer—William, Governor of New Hampshire, United States—Letter from, on Codification Proposal, iv. 577.
 — — Letters from, to Bentham, x. 504, 556-557.
 Plunder an object of civil procedure in England, vi. 479.
 Plurality in administration—Advantages

and disadvantages of, i. 571. See Board: Individual Responsibility.
 Plurilateral and Unilateral—Suits divided into, ii. 82-84.
 Pneumatic or immaterial objects—Reasons why it is necessary to use the language of material objects for the expression of, viii. 327-329.
 Pneumatics—Mechanical: defined and located in the Chrestomathic system of Education, viii. 31.
 Pneumatology—Position of, in a general division of Arts and Sciences, viii. 81.
 — Division of, into Nooscopic and Pathoscopic, viii. 88.
 Poets—Remuneration of, considered, ii. 212-213.
 Poetry—Value of the art of, ii. 253-254.
 — How far imagination necessary to, viii. 76.
 — Application of melodiousness as a property of language to, viii. 306.
 — Bentham's appreciation of, x. 583.
 Poison—How far the sale of, might be regulated, i. 560.
 Poisons—Promulgation of knowledge as to, a safeguard to the public, i. 553.
 Poisoning—Analogy in the punishment for, i. 408.
 Poland—Letter to Bentham, with remarks on the Politics of, in 1794, x. 297-300.
 — State of the poor gentry in, ii. 196 n *.
 — Custom of the kings of, from the murder of a bishop in, i. 550.
 — Bentham's passage through, on his way to Russia, x. 158-159.
 — Leave asked of the Emperor of Russia to prepare a code for, iv. 527.
 — Illustration of secret voting in the permanent Council of, ii. 369.
 — The liberum veto in, and its effects, ii. 306.
 — Advantages of the registration of land illustrated in, x. 350.
 Polemics—a pretence to know things unknowable, x. 584.
 Police—Definition of, i. 102 n +
 — Preventive—Offences against, and their genera, i. 101-103, 133 n.
 — Restraints of, distinct from punishments, i. 436.
 — The extent to which information as to individuals should be accessible to, i. 557.
 — Espionage of—unpopularity of the expression, ii. 222.
 — Services of the Poor-law to, in suppression of mendicants and depredators, viii. 401-406. See Pauper Management.
 — Offences against, as a subdivision of public offences, iii. 169.
 — Nomenclature as to, indicative of forwardness in civilisation, i. 102 n *.
 — regulations of, for prohibiting acts preparatory to offences, i. 559-561.
 — Efficacy of the metropolitan, vi. 171 n.

Police—The Thames—Heads of a bill for regulating, x. 331-333.

Police magistrates—Metropolitan—Observations on Peel's bill for raising the salaries of, v. 328-348. *See* Magistrates.

— — — Salaries and duties of, iii. 402.

— — — Creation of the, vii. 327-328.

— — — Secrecy of some inquiries before, vi. 28, n. †.

Policy—use of the term by lawyers, vii. 310, 484 n.

Polioscopic ethics or politics—Position of, in the Encyclopedical Sketch of Art and Science, viii. 94.

— — — Divided into Esoscopic and Exoscopic, viii. 94.

Politeness—Principles of, in reference to topics of conversation, x. 518-519, 531-532.

Political Assembly—Mode of proceeding in a, in the formation of its decisions, ii. 330-350. *See* Legislative Assemblies.

Political bias—how judge can act on, vii. 308.

Political Code—Plan of the, iii. 199-200.

Political Denominations—Imputations on the ground of identity of, ii. 416-417.

Political Economy—Manual of, iii. 31-84. *See* Economy.

— — — Bentham's account of his studies in, x. 413.

Political fictitious entities—Analysis of, viii. 206.

Political jobbing characterized, ii. 384-385.

Political liberty—Forfeiture of, as a punishment, i. 474.

Political nomenclature—Diversities of, in different nations, in. 196.

Political offences, the creations of the monarchial system, ix. 37-40. •

Political offenders—interests that shield them from justice, vii. 450.

— — — Publicity and privacy in trial of, considered, vi. 369-372. (*See* Publicity and Privacy—cases particularly unmeet.)

Political powers—Elementary, with reference to a general code, iii. 195-199. Definition of power, 195-196. Diversity of nomenclature in different countries, 196. New nomenclature necessary, ib. Immediate power over persons, ib. Immediate power over the things of another, ib. Immediate power over public things, ib. Command over individuals, 196-197. Command over classes, 197. Power of specification—as to persons and things, ib. Attractive power—of rewarding or not rewarding, ib. Recapitulation, 197-198. Defence of the nomenclature—comparison with the usual division into legislative, judicial, and executive, 198-199. •

Political (or legal) sanction—Definition of the, i. 14.

— — — Punishments of, compared with those of the moral, i. 454-455.

Political (or legal) sanction—Source and direction of the, iii. 290-291.

— — — Method of pointing the force of, in the case of oaths, vi. 320.

— — — Effect of, on evidence, vi. 20, 260-261, 268-270. *See* Sanction.

— — — Obligations arising out of the, considered as Fictitious entities, in Ontology, viii. 206.

Political Tactics. Essay on, ii. 301-373. *See* Assemblies—Legislative: Members: Motions.

Political Unions—Letter to Mr Tait on, xi. 67-68.

Politics divided into internal and international, in the Encyclopedical Sketch of Art and Science, viii. 94.

— — — Expressed by Polioscopic ethics, in the Encyclopedical Sketch of Art and Science, viii. 94.

— — — Impediments to coming to right conclusions in, shown in connexion with causation, viii. 209-210.

Polling—Plan for, in Radical Reform Bill, in. 577-579.

— — — Apparatus for the accomplishment of, in Radical Reform Bill, iii. 571-574.

Polling districts—number of—Considerations affecting, iii. 583 n.

— — — Provisions in Radical Reform Bill for dividing the country into, iii. 579-582.

Polling-places—Distance of, an abuse, iii. 561.

— — — and attendants—Provision for appointment of, in Radical Reform Bill, iii. 567-570.

Polygamy—Effects of, discussed, i. 357.

— — — classified as an offence, i. 130.

Ponsonby—Brabazon—his motion for Parliamentary Reform in Ireland, iii. 619.

— — — noticed, v. 371.

Poor—The. Duty of Government to educate i. 570.

— — — have an interest in the continuance of Government, ii. 421.

— — — the class chiefly subject to the incidence of law taxes, ii. 574-575.

— — — debarred from political power, and the reasons, ii. 575.

— — — considered more as objects of charity than of justice, ii. 579.

— — — Project for encouraging frugality among, iii. 145.

— — — Axioms on which a legal provision for, founded, iii. 227-228.

— — — A compulsory provision for, distinguished from pensioning, v. 305.

— — — the crimes which they are liable to be suspected of, tried with imperfect evidence, vii. 505.

— — — No justice for, but criminal, in England, vii. 305.

— — — Letter on the situation and relief of, viii. 361-362.

Poor—The. List of exigencies operating on, and corresponding forms of supply, viii. 407.

— — — enjoy, in common with the rich, the chief elements of felicity, ix. 15-17.

— — — have more interest in good government, and faculty to appreciate it, than the rich, ix. 110-112.

— — — justice for—Arrangements for obtaining, in the Constitutional Code, ix. 489-493.

— — — the reasons why they are more moral than the rich, x. 519.

Poor Bill introduced by Pitt—Observations on the, viii. 440-461.

— — — Editorial notice of, viii. 440.

Poor-houses—Application of the Panopticon system to, iv. 37-248.

Poor Laws—Principles on which they ought to be founded, i. 314-316.

— — — as a preventive of crime, i. 543-544.

— — — Sieyes' doctrine as to, criticised, ii. 533-534.

— — — as a means of preserving population, iii. 72-73.

— — — Difficulties of, solved by the Panopticon system, iv. 39.

— — — and pauper management—Tracts on, viii. 358-461.

— — — Note by Editor on the tracts on, viii. 358.

— — — Plan of, in connexion with a central company and district industry-houses, viii. 369-439. *See* Pauper Management.

— — — Parochial system of—Detriment from the perpetual revolutions of, viii. 432 n.

— — — The plan of, by giving supplementary allowances to make up wages to a certain pitch, criticised, viii. 441-444. *See* Wages.

— — — Plan of relief according to the number of children—difficulties of, illustrated, viii. 444-446.

— — — Proposed plan for bestowing a cow on poor and meritorious people criticised, viii. 446-449. Plan detailed, 446-447. No security against improper application and recurrence on the parish, 447. Cases of private benevolence where the giver looks after the use of the gift, not an analogy for a national system, 447-448. Might be made to serve political interests, 448. Objections to the form of the investment, supposing it right to give the value, 448-449.

— — — Difficulties in the way of efforts in, to give assistance to the unfortunate but not absolutely destitute, otherwise than by bringing them within the class of paupers, viii. 449-451.

— — — Out-door apprenticeship system, with apprentice fees, criticised, viii. 452-455.

— — — Subsistence, the foundation of a, one of the objects of the civil law, ix. 13.

— — — Under the direction of the Indi-

gence Relief Minister, in the Constitutional Code, ix. 441.

Poor Laws. *See* Pauper Management.

Poore—Mr, a fellow-student of Bentham, x. 40.

Pope—Alexander. His allusions to Defoe noticed, i. 417.

— — — noticed, x. 532.

Popham, the name of a college companion of Bentham, x. 41.

Popham—Alexander—an acquaintance of Bentham, x. 90.

Popish recusants—Treatment of, as to testimony, vii. 424.

Popular corruption—Uses made of, by the opponents of reform, ii. 453-455.

Popular despotism—Favour shown to, i. 318.

Popular education—Jealousies and groundless fears against, viii. 20.

Popular election of officers—Considerations as to, showing how the power of popular motion necessary to bring out the right effect, iv. 359-360.

Popular feeling—its inability to effectuate law reform, vii. 208-209.

Popular government—the solution it affords to difficulties, iv. 359.

Popular (or moral) sanction—Definition of the, i. 14.

— — — as a preventive of crime, i. 563-564.

— — — its effect on evidence, vi. 19-20, 260-261, 264-268.

— — — *See* Sanction.

Popularity as applicable to punishments, i. 411-413. Capricious objections on the ground of liberty, decency, religion, humanity, ib.

— How far the desire of, may mislead legislators, ii. 313.

— Necessity of consulting, in legislative measures, ii. 588, 591-592.

— Advantage of a magistrate possessing, independently of the question of his deserving it, iv. 359.

— as a property of punishment, i. 405.

— Device for securing, by making cruel laws and restricting their efficacy, vii. 258-259.

Population—Offences against, i. 101-103.

— Genera of offences against, i. 134 n.

— Offences against—their place in the Penal Code, iii. 170.

— Most advantageous position of the, for wealth, iii. 52.

— Utility of tables of, i. 557.

— Returns of—Expedition shown in collecting and digesting, v. 411.

— In what respect government can affect, iii. 72-75. Positive assistance limited to prevention of depopulation, by sanatory regulations, &c., 72-73. Good laws, and producing abundance and security, the best means of increase, 73. Uselessness of encouragements to marriage, ib. Labouring population willing, ib. Propaga-

- tion of idle consumers no advantage, 74. Prejudices against large towns, and efforts to suppress them, *ib.* Emigration, 74-75.
- Population of the empire, with relation to number of representatives, considered, *iii.* 584 n.
- Pressure of. Considerations as to educating children for colonization in the case of, *ix.* 443.
 - Proper method of taking a census of, in remarks on the Population Bill, *x.* 351-356. Names should be returned as well as numbers—security against error, record more valuable, greater ease to the respondent, 351-352. Ages—use to vital statistics, 352. Number of Baptisms, Burials, and Marriages, *ib.* Individualization of houses, 352-353. Circulation of queries to the Justices through the Post-office, 353. The fees, *ib.* As an inducement to accuracy—Plan suggested of paying so much a-head to the enumerators, for the numbers returned, with penalty for exaggerated return, 353-354. Employing the clergyman of the parish, 354. Curates—addition to their small salaries, 354-355. Considerations as to the advantage of making the return periodical, 355. Whether oath necessary, *ib.* Extra-parochial places, *ib.* Return of occupation—difficulty of getting the uneducated to assist, 355-356.
- Pornographie—Allusion to a work termed, *i.* 546.
- Porphyrian Tree—Description of, as an important acquisition in the history of logical science, *viii.* 266-267.
- — contains the only sort of division necessarily exhaustive, though others may incidentally be so, *viii.* 290-293.
 - — shows the number of classical aggregates in the *genus generalissimum* existence, *viii.* 257.
 - — attributed to Ramus, *viii.* 103.
 - — Application of, to securities for evidence, *vi.* 286.
- Porphyry—Inquiry whether he was the real inventor of the Porphyrian Tree, *viii.* 110-112. The Greek formula compared with the Latin, and the latter ascribed to Ramus, *ib.* But see 112, note.
- Portalis—noticed, *x.* 395.
- Porteous Mob—Punishment of corporation of Edinburgh for, considered, *i.* 483.
- Porter—Mr, “the commercial friend”—Notice of, *x.* 258.
- Portland—Duke of—His remark on the Panopticon Model, *xi.* 105.
- — Correspondence with Romilly as to the proposed exposure of the conduct of, in reference to the Panopticon, *x.* 399-400.
 - — His conduct regarding the Panopticon Penitentiary project, *xi.* 127, 128, 130, 131, 134, 137, 143
- Portland—Duke of—Casual notices of, *v.* 143 n, 315; *x.* 302, 333, 335, 362, 391-392, 434.
- Portsmouth—Dock-yards of—Sir Samuel Bentham employed to enlarge, *x.* 313.
- Portugal—Incestuous alliances in, *i.* 351.
- Emblematic punishment in, *i.* 461 n *.
 - Testimonials from, to the author's qualifications, *iv.* 573-576.
 - Minute of the Cortes of, ordering a translation of Bentham's Works, *iv.* 573.
 - Offer of a general Code of Laws for the use of, *iv.* 575-576.
 - The progress of Bentham's philosophy in, *viii.* 465-466.
 - Benefit to, of dissolving connexion with the American colonies, *viii.* 485.
 - Affairs of, and of Spain—Three Tracts on, *viii.* 465-486.
 - Government of, a mixture of monarchy and democracy, *ix.* 49.
 - Reception of Bentham's Works by the Cortes of, *x.* 525, 539.
 - Letter to the people of, on antiquated constitutions, *viii.* 482-485. See Spanish Constitutions.
- Positive and negative acts distinguished, *i.* 36 and n *.
- Positive facts distinguished from negative, *vi.* 217-218.
- Positive-pain-preventing principle—Influence of the, *iii.* 212.
- Posology—proposed to be substituted as a nomenclature for Mathematics, *viii.* 287.
- or mathematics—Position of, in an Encyclopedical Sketch, *viii.* 85.
- Possession—Considerations as to the principles of, in casual discoveries, *i.* 325.
- Actual—Nature of title from, *i.* 327.
 - ancient *bonâ fide*—Title from, *i.* 327.
 - Definition and analysis of the various kinds of, with relation to forfeiture as a punishment, *i.* 451-453.
 - considered as an event conferring a right, *iii.* 188-189. Divided into physical and legal, 188. Difference of ideas of, according to nature of subject, 188-189.
 - Exposition of, with reference to a universal code, *iii.* 221-222. The Roman principle, *melior est conditio possidentis*, referred to utility, *ib.*
 - a word requiring special exposition when used in law, *v.* 413.
 - Circumstantial evidence of delinquency from, *vii.* 11-13. Actual and antecedent, 11. Infirmative facts—unconsciousness, clandestine introduction, forcible introduction, non-identity, view of furtherance of justice, 12. Criminative written evidence, 12-13. Difference between writing of accused party, and of other person addressing him, 13.
 - Indistinctness of the ideas attached to the word, *vii.* 11.

- Possession—as one of the Aristotelian Post-predicaments, viii. 236.
- Possibility and impossibility. *See* Impossibility; Incredibility.
- Post—Letter—Sieyes' doctrines as to the inviolability of, considered, ii. 532.
- — Applicability of to judicial intercourse in relation to writs, &c., ii. 53-55; iii. 378-379.
- — as a means of facilitating pecuniary remittances, viii. 417.
- — as a means of circulating Annuity notes, iii. 111.
- — Regulation of, on Mr Palmer's plan, noticed, i. 556; ii. 204.
- — essential to a free government, ii. 287.
- — In the department of the Interior-communication Minister, by the Constitutional Code, ix. 441.
- Posteriora priorum, and priora posteriorum*, or evidence from chains of events, vii. 62-64.
- Potatoes—Inquiry into the productiveness of, and the economy of using as a prison food, x. 256-257.
- Potemkin—Prince, his projects and connexion with Sir Samuel Bentham, x. 147-148, 149.
- — noticed, x. 139, 159, 161, 167; xi. 97.
- — an amusement of, noticed, ii. 255.
- Pot-wobblers—Characteristic qualifications of the class of voters called, iii. 581 n.
- Poulter—"The Discoveries," &c., of, referred to, i. 554.
- Poverty—not the creature of law, but the state of nature, i. 309.
- Sensibility to the operation of the moral sanction as affected by, i. 457.
- as a cause of crime, iii. 227.
- How far it is an inducement to perseverance, iv. 372-373.
- punished by outlawry in England, vii. 254.
- Existence of, and not the want of merits, chief cause why defendants make no appearance, vii. 546.
- as a defect in language, considered, viii. 309.
- an impediment to the exposure of offences, viii. 578-579.
- *See* Indigence.
- Powell—Mrs—a relative of the Bentham family, x. 14.
- Powell's Attorney's Academy—characterized as the oldest book of practice, v. 76 n.
- Power—a word requiring special exposition when used in law, v. 413.
- Exposition of, with reference to a universal code, iii. 222-223.
- an expression inclusive of right, i. 105 n ‡.
- The pleasures of, i. 18.
- authority, &c.—Pleasures and pains of, with the correspondent interest and motives, i. 119.
- Power—Love of, as a motive, i. 52-56.
- Love of—Character generally given to the motive of, i. 213, 219.
- divided into—over persons and over things, i. 278 n.
- Division of, into branches, as a precaution, i. 570-571.
- General precautions against abuse of, i. 570-578.
- Advantages and disadvantages of distributing, i. 571.
- How far it can be made a means of reward, ii. 195.
- Checks on, a leading end of the Constitutional Code, ii. 270-271.
- without responsibility, reduces trustworthiness, ii. 389-390.
- Authority derived from, ii. 389.
- Abuse of, by ministers of justice—punishment of, ii. 513.
- as an object of security by the law, iii. 213.
- Appropriate—Use of the consideration of, as distinct from appropriate will, iii. 293.
- support of, in a monarchy—Evils inflicted for the, iii. 438-445.
- Necessity of having checks to, wherever it exists, v. 69.
- its propensity to draw to itself the national wealth—Burke's opinion on, criticised, v. 297-298.
- Distribution of, in a state, as much a matter for economy, as money, ix. 27-28.
- Connexion between wealth and, ix. 48.
- Impossibility of preserving equality in, ix. 81.
- Aptitude for good government does not increase, but decrease, with the amount of ix. 110-113, 193.
- How it is more influential than money as a means of bribery, x. 511-512.
- Natural increase of the appetite for, x. 531.
- Arbitrary. Exclusion of, as a protection, i. 576.
- Balance of. The term, a vague generality, inapplicable to the operations of government, ii. 445-447.
- Balance of—Arrangements under the title of, produce more evil than good, ix. 123.
- Supreme—Right and duty of the, to make laws, i. 283-295. *See* Supreme Power.
- Abuse of. Place of, in the Penal Code, iii. 167.
- Dubiety that is likely to attend the notions of the use of the word in mathematics, on account of its application to other purposes, viii. 180-181.
- Powers—Constitutional distribution of, in connexion with the principle of irrevocable laws, ii. 404.

- Powers**—Elementary Political, considered, with reference to a general code, iii. 195-198. *See* Political Power.
- of the human mind—Enumeration of the, viii. 281-282.
 - Mechanical—Inquiry whether a common denomination can be found to express the qualities of, viii. 146-147.
 - and Rights—Definition of, with reference to obligations, i. 105-106 n.
- Practicable**—Too good to be, a fallacious expression used against improvement, ii. 461-462.
- Practical Ethics**—Position of, in the Encyclopedical Sketch of Art and Science, viii. 94.
- Practice or habit**—Nature of, i. 37.
- Application of, to the Arts and Sciences, ii. 253.
 - The calling a plan bad in, but good in theory, a fallacy, ii. 459-460.
- Practice (Legal)**—Meaning of the technical expression, v. 76 n *.
- Practice**—English. The evils of, ii. 48-49.
- — in regard to the evils of vexation in producing evidence, vi. 103-104.
 - — How a cause put off by, in absence of a witness, vi. 91.
 - — *See* English Law.
- Præcognita of Logic**, according to the Aristotelians, criticised, viii. 232-234.
- Præmunire**—Confusion and inexplicability of the law regarding, i. 511-512.
- Praise**—Indiscriminate, of officials, conducive to misconduct, ii. 427.
- Pratt**—Mr Justice. *See* Cambden—Lord.
- Pratt**—Mr, son to Lord Cambden, noticed, as a visiter at Bowood, x. 100, 102, 104, 111, 112.
- Pratt**—Miss—Account of, as a visiter at Bowood, x. 104, 110, 111, 112, 113, 557.
- Preambles of Statutes**, characterised, iii. 249 n.
- — Inanity of reasons given in, i. 465.
 - — Animadversions on an instance of lengthiness in, iii. 585-586 n.
 - — English and French—Effect in keeping the mind suspended, iii. 323.
- Preappointed evidence**—Difference between and unpreappointed, vi. 68-71, 219. The difference developed, 68-70. Inconsistency and confusion from want of right comprehension of it, in English practice, 70-71.
- — compared with casual, vi. 173.
 - — considered, vi. 60-67. Nature and origin, 60-61. Uses anti-litigious and statistic, 61-62. Legislator's duties in relation to, 62. Subject-matters, 62-63. Formalities for contracts considered as a branch of, 64-65, (517-530). Means of enforcing their observance, 64-65, (517-525). Wills, 66-67, (530-551). *See* Formalities; Wills.
- Preappointed evidence in general**, vi. 508-513. Purposes, 508. Original and transcriptitious, ib. Objects;—laws, contracts, facts, 509. Advantages—divided into collateral and direct, 510. Uses—to individuals, to judge, to legislator in the way of statistics, &c., 511-512. Formalities—scriptio, authentication, examination, multiplicate scriptio, registration, and notification, 512-513.
- — Legally operative facts considered as subject-matters of, vi. 62-64, 566-570. Duties of Legislator, 566. Nature of facts to be registered, divided into—1st, regularly occurring (as those affecting condition, and those affecting collative and ablativ facts;) and, 2d, casualties, 567. By whom should registration be performable, 567-568. How to secure the verity of such evidence, 569-570; Eventual punishment for falsehood in all cases—counter-interrogation where attainable, 569. Instructions, 570. *See* Genealogical Facts.
 - — The principle of, as exemplified in real evidence, vi. 583-585. Fences, landmarks, standards of quantity and quality, revenue stamps, maker's name, 569. Fabrication of a maker's mark a species of forgery, 584. Registration of marks, ib. Illustration from copyright act for designs, ib. n. Penalty on fraud, 585.
 - — unnoticed by Gilbert in his Law of Evidence, vi. 183.
 - — Provisions for, in the Constitutional Code, by the establishment of Local Registrars, ix. 625-636. *See* Registrars.
 - — *See* Contract; Formalities; Genealogical Facts; Laws; Official Evidence; Registration; Wills.
- Preappointed official evidence**, vi. 72-79. 553-566. Application to transactions of offices at large, 72-76. Direct and collateral uses, (viz. judicial and statistic,) 72, 554-555. How trustworthiness to be estimated, 72-73—how to be secured, 74-76. Transactions of judicial offices, 76-77, 556-557. Laws as matter of preappointed evidence—necessity for recording and publishing them, 77-78. Debates of legislative bodies, 78-79.
- Preappointed *ex parte* written evidence**, vii. 126-129.
- Preaudience**—Impropriety of fixed order of, in legislative assemblies, ii. 346-349.
- Precautions for the protection of the public against offences**, i. 551-557.
- General, against abuse of authority, i. 570-578.
- Precautionary regulations**, in the admission of casually-written evidence, vii. 125-126.
- Precedence**—Attention paid to questions of, in England, ii. 322.
- Precedent**—the term an excuse for the repetition of an abuse, x. 511.

PRE

- Precedent**—Arbitrary acts on the ground of, ix. 322-323. Evil because our ancestors have done evil, 322. The more distant and barbarous the age when the precedent was practised, the more worthy it is deemed of adoption, 323.
- Absence of. Fallacy of the argument from, ii. 410-411.
 - old and unpublished, judicially used in England, vi. 389-391.
- Preceptor**—Authority of one holding the character of, i. 232.
- Precious metals.** See Metals.
- Precipitation**—Danger of, a fallacy cited in favour of delay of justice, viii. 476-478. Created by delay, ib. Confounded with promptitude, ib.
- as an inconvenience in legislative assemblies, ii. 302.
 - Means of avoidance of, in legislation, ii. 366-367.
 - Avoidance of, as a proper end of judicature, ii. 17.
 - Judicial—Effect of, and remedies for, by Quasi-appeal, ii. 162-164.
 - an effect of fixed rules in judicature, ii. 32.
 - in judicature—The evils of, and the remedy to, iv. 339 n.
 - of suits—a grievance charged in the Petition for justice, v. 468-470, 521-522.
- Precision**—Etymology, and practical application of the word, viii. 102 n.
- Predicaments**—The. Physical fictitious entities, viii. 199.
- of the Aristotelians considered as entities real or fictitious, viii. 234-236. Substance, 235. Quantity and quality, ib. All the other seven come under relation, ib. Action and passion, ib. Place, ib. *Ubi* and *situs* interconvertible, ib. Time, ib. *Habitus* considered as denoting vesture, 235-236.
 - Sciences involving the, viii. 286-288.
 - Condillac's exemplificative method of showing the progressive discovery of the, criticised, viii. 282-283.
- Predicaments**—Post, the five, of the Aristotelians, examined, viii. 236. Motion—more important than many of the Predicaments; others come under relation, ib.
- Predication**—Nature of, examined, viii. 335-336. Is an attribution of a quality to a subject, 335. Qualities enumerated, 335-336. Real and verbal Predication, 336.
- Prehension in judicial procedure**, ii. 116-117. Subject matters, 116. Search, and purposes for which it may be made, ib. Purposes for which it may apply to persons, 116-117. Conditions to justify warrant of arrestation, 117. Seizure of property, ib.

PRE

- Prehension**—Reasons for extensive power of, to judges, iii. 352 n.
- Prehensor**—Use of the term, to express an officer for the purpose of apprehending, iii. 376-377 n.
- as a judiciary officer in the Constitutional Code, ix. 466.
 - and his deputed—Account of Provision for, in Dispatch Court Bill, iii. 311.
- Prehensors**—Judicial—Provisions regarding, in Constitutional Code, ix. 637-639.
- Prehension**—The taking possession, by physical force, of persons or things, 637. Fields of service—coequal with judges', ib. Mandate to pursue into other judicatories, 637-638. Self-suppletive function, 638. Who locable—any one who can read and write, ib. Peculiar eligibility of persons who have served in the army or navy, ib. Considerations as to the prehension of foreigners, and females, 638-639. How locable and dislocable, 639.
- and messengers in proposed Equity Dispatch Court—Functions of, iii. 376-381.
- Preinterpretative Function of Judges** in Constitutional Code, ix. 511-512.
- Prejudice**—Definition of, and cause of existence of, ii. 478.
- How it leads astray by words, iii. 28.
 - Authority-begotten—a cause of the existence of fallacies, ii. 478-479.
 - Interest-begotten. Effect of, i. 217-218.
 - Interest-begotten—a cause of the existence of fallacies, ii. 477-478.
- Prejudices**—Salvo for good government and morals in, i. 182.
- Necessity of keeping in view, in legislation, i. 323.
 - How far the legislator can neutralise, i. 464-465.
 - How spread by the learned, i. 537.
 - The, which act as interruptions to the progress of invention, viii. 276.
 - of class religion, &c.—Means of obviating the influence of, on juries, v. 165-167.
 - National. How to be dealt with in reforms, i. 180-184.
 - Popular, against punishments, i. 411-413.
- Preliminary meeting of parties to a suit**, as a means of curtailing litigation. See Meeting.
- Premeditation**—Aggravation of injury from, i. 165, 167.
- Premiums**—Suggestions of Political and Ethical subjects of Essays for, x. 76.
- Prentice**—Archibald—Correspondence with, on his Trial for Libel, xi. 69-70.
- Preparations for committing crime as affording evidence of delinquency**, vii. 18-22.
- Precedency and antecedenacy in time**, 18-19. Illustrations, 19, (68.) Different

- orders of preparation, 19. Case of Captain Donnellan cited in illustration, 19-20. Preparatory acts conclusive of guilt converted into separate offences, 20. In what distinct from attempts, 21. Infirmative circumstances applicable, 21-22.
- Propositions—may bear the import of entire propositions, viii. 336.
- The nature of, viii. 356.
 - The connexion of, with adverbs and conjunctions, viii. 356.
- Prerogative—The expression, used as an argument never admitting of contradiction, v. 134.
- Abuse of—how caused by Coronation Oath, v. 206-207.
 - Limitation of the, in respect to creation of peers, proposed, iii. 531.
- Prescription—or ancient *bonâ fide* possession—principle of acquiring a title by, i. 327.
- according to the civilians—Unaptness of the expression, x. 509.
 - of punishment, by length of time, i. 521-523. With regard to reformation, 521-522. Example, 522. Some offences for which ought not to exist, ib. Must depend on nature of offence, 522-523.
- Presence—Personal of Parties would check oppression in Litigation, ii. 172.
- President—Meaning and use of the term, ii. 327.
- an unapt term for expressing the head of a government, ix. 204.
- President of United States—more secure than King of England, ii. 121.
- — — Letter to, on Codification, with answer, iv. 453-468.
 - — — — His administration of the chief command of the army, ix. 363-364.
- Presidents of Legislative Assemblies, ii. 327-330. *See* Assemblies.
- Press. The (Public Newspaper)—Enlightening effects of, i. 568.
- — Uses of, in preserving responsibility of men in office, ii. 451-452.
 - — Operations and power of, compared with those of the official judicatories, viii. 565-572.
 - — Gives direction to the Public-opinion Tribunal, viii. 565.
 - — The evil of restrictions of, as undermining the protection of the Public-opinion Tribunal, and giving currency to secret defamation, ix. 53-58. *See* Rule—Good and Bad.
 - — Licensing, a more effectual suppression of than prosecution, ix. 55.
- Press—Liberty of the, a characteristic of a free government, i. 288.
- — Preponderant advantages of, in comparison with censorship, i. 538.
 - — Paramount importance of, as a branch of legislation, x. 456.
- Press—Liberty of the. *See* Liberty of the Press.
- Pressure as productive of motion in connexion with springs, viii. 139.
- Presumption—Coke's division of, into violent, probable, &c., discussed, vi. 231; vii. 69.
- in law—Nature of, vi. 115 n.
- Pretium affectionis*—The nature of, i. 322.
- — should be kept in view in legislating as to value, vi. 411.
- Preventing crimes—Indirect means of, i. 533-580.
- Prevention—Particular and general, as the ends of punishment, i. 396.
- of offences by making many individuals interested in the prevention, i. 556.
- Preventive Remedies against offences—Nature of, i. 367.
- Preventive-service Minister—Provision for, in Constitutional Code, ix. 439-441. To take order for prevention of calamity and delinquency, 439. Examples of calamities, ib. Arrangements for prevention or mitigation in reference to each, ib. Things over which he will have power for the service of his office, ib. How far the army and navy may be employable in this function, 439-440. Use to the military as professional training, 440. Their peculiar aptitude for the duties, ib. Subject-matters of local knowledge, as to which they may be deficient, ib. Mixture of migratory and stationary functionaries, ib. Danger of seduction by local intercourse, especially in revenue offences, of which, the moral mischief not distinctly felt, 440-441.
- Price—Rev. Humphrey. His account of himself, and correspondence with Bentham on the circumstances of his being imprisoned for a Libel, written in defence of the carpet weavers of Kidderminster, xi. 43-48.
- Price—Dr Richard. The mechanism of his Mortality Tables criticised, viii. 410-411 n.
- — Sinking Fund suggested by, ii. 312.
 - — His views on probabilities, vi. 243.
 - — Letter from, to Bentham, x. 246.
 - — noticed or quoted, i. 8-9 n; xi. 74.
- Prices—Effect of free competition on, ii. 228.
- Influence of paper money on, iii. 108.
 - Rise of. How to obviate in case of the project of Annuity notes, iii. 139-141.
 - Relation of, to the amount of money, with their incidence on different classes, iii. 45-46, 69-70, 139-140.
 - Inefficacy of attempts to fix, by law, iii. 66.
 - Legal limitation, as applicable to as to interest, iii. 8.
 - Publication of, a service which Government may do to trade, iii. 71.

Prices—Information on the fluctuations of, in domestic articles, x. 377-378.

Pride, arrogance, &c., as designative of motives, i. 201.

— Family. Inquiry into the causes of, ix. 82.

Priest—Confession to, should not be demanded as evidence—would only have the effect of suppressing the act of Penitence, with any incidental good that may accompany it, vi. 98-99; vii. 366-368.

— The—described as one of the instruments of monarchy, ix. 135-136.

Priestcraft—Notice of the progress of, i. 505.

— as connected with the University of Oxford, ii. 261-262.

— Its influence illustrated in Jephthah's and other Jewish vows, v. 222-223.

— Its restraining influence in barbarous times, v. 222.

— Origin and progress of, in the power acquirable by men who profess to secure eternal felicity to others, ix. 20.

Priesthood—Influence of the, in Spain, viii. 469.

— See Clergy.

Priestley—Use of the expression "Greatest happiness of greatest number" by, x. 46, 79.

— Whether he or Beccaria first suggested to the author the greatest-happiness principle? x. 142, 567.

— characterized as a materialist, viii. 84.

— opinion of, x. 571.

— casual notices of, i. 57 n ‡, 193, 230; ii. 462; iv. 64, 457; vii. 90, 430; viii. 521; x. 19, 215, 281, 316, 317, 561; xi. 74.

Primæval analysis as distinguished from logical, viii. 122-124.

Primary mischiefs distinguished from secondary, i. 69. See Evils.

Prime Minister—Provision for, in the Constitutional Code, ix. 204-213.

— — Field of Service of, ix. 204-205. Local field coextensive with that of the Legislature, under which he has to perform all that does not specially belong to the judiciary department, 204. The designation an apt one—superior to President and other like, 204-205.

— — Functions of, ix. 205-206. Executive, 205. Directive, ib. Location and promotion of other Ministers, ib. Correspondent dislocation and suspension, ib. Imperative function in relation to the defensive force, 205-206. Acts relating to it—Promotions, instructions, &c., to be in writing with exemplars, 206.

— — His relation to the legislature, ix. 206-207. Communications all by writing, except when specially sent for, 206. Functions—the indicative, initiative, and statistic, 206-207.

— — Self-suppletive function of, ix. 207. A depute for whom he is responsible, to

act when he is unwell or the office is vacant, ib.

Prime Minister—Term of service of, ix. 207-208. Limited—suggestion of four years, 207. Restriction on reeligibility ib. Election of successor, 207-208.

— — Remuneration of, ix. 208.

— — Who locable as, ix. 208. No monarch or person of royal blood, ib. A residence qualification, ib.

— — How located, ix. 208-209. Chosen by the legislature, 208. Method for uniting open and secret voting, 208-209.

— — How dislocable, or removable from place, ix. 209. By the legislature or the constitutive, ib.

— — Registration system for the office of, ix. 209. Use of the manifold mode of writing for the distribution of exemplars, ib.

— — Publication system of, ix. 209-212.

The use of, in bringing the matters of every department to the knowledge of any person to whom they may be of use, 209-210.

Impediment to Publicity—Expense, 210.

Publicity useful, both for the general service of the public, and for particular service, ib. Exceptions where the evil would be preponderant, ib. Instances—Suffrage

of Electors, Army, Navy, Preventive Service, Health, Foreign Relation, and the Judiciary Departments, all liable to a demand for secrecy, ib. Limits to the time during which the secrecy is necessary, and then demand comes for publicity, 210-211. Publication—internal to the official establishment, or external, 211.

The former, registration—the latter, printing, ib. Rules for limiting the exceptions in favour of secrecy, 211-212.

— — Securities for appropriate aptitude on the part of, ix. 212-213. Registration, Publication, Dislocability, &c., 212. Responsibility to attend to complaints against subordinates, 212-213.

Primogeniture—Barbarous origin of, and evil effects of in preventing the beneficent distribution of property, ix. 17-18.

Primum Mobile—Expression "source of motion" preferred to, viii. 131-132.

— — The kinds of, enumerated, vii. 84-85.

Principal facts—General view of, as objects of penal and non-penal procedure, vi. 215-216.

— — distinguished from evidentiary, vi. 44, 208, 215. See Circumstantial.

— — and evidentiary—Difficulty of showing connexion between the correspondent classes of, vi. 216.

Principals and accessories—Reference of questions as to, to contracts, iii. 177.

Principle—Definition of the term, i. 1 n ‡.

— Definition and application of a, iii. 215; wherein distinguished from a rule, ib.

Principle—The, of utility, i. 1-4.
 Principles adverse to utility, i. 4-13.
 — All declarations of, are statements that a person has formed a certain opinion, ix. 3-5.
 — Leading, of the Constitutional Code, ii. 269-274.
 — as applied to a general system of law—wherein they consist, iv. 494.
Principles of the Civil Code, i. 299-364.
Principles of International Law, ii. 535-560.
Principles of Judicial Procedure, ii. 5-181.
Principles of Penal Law, i. 367-580.
 Printing—Superiority of, to writing, for transcripts, vii. 140.
 — of legislative acts preferable to the French system of registering, iv. 311.
 Prior—Matthew, referred to, vi. 314-315.
 Prior r. Powers—Case of, cited, vi. 226 n *.
 Prior and posterior acts considered as principal and probative, vi. 47-48 ; vii. 62-64.
 Priority—as one of the Aristotelian Post-predicaments, viii. 236.
 Prisons—Arrangements of, in regard to debtors, and the various grades of criminals, i. 429-431.
 — Principle on which reform as to, should proceed, ii. 251-252.
 — Exclusion of visitors from, when and how far necessary or useful, iv. 23.
 — Proper system of visiting—Rotation of visitors, &c., iv. 25.
 — Application of the Panopticon system to, iv. 37-248.
 — Attention in their locality and construction, to their protection from mobs, iv. 105-109.
 — Contamination in, fostered by judicial delays, v. 468.
 — The corruptive influences of, enumerated, viii. 418-419.
 — Regulations for, adapted to a Mahomedan state, viii. 586-587.
 — Authority of the Health Minister in regard to, by the Constitutional Code, ix. 444.
 Prison-breaking. Obviation of, by the Panopticon arrangements, iv. 46.
 Prison discipline—Possibility of carrying the solitary system too far—only to be adopted so far as necessary to subdue the refractory, and obviate contamination or combination, iv. 71-76.
 — — Religious worship as a department of, iv. 78-79.
 — — Giving an opportunity for inspection by strangers as a part of, iv. 78-79.
 — — Evils inseparable from, and incidental to, i. 421-422.
 — — Airing and exercising yards, and method of parading prisoners, as connected with, iv. 98-105.

Prison discipline—Work containing a complete system of, a desideratum, iv. 121.
 — — Prejudices and feelings that interfere with the practice of a complete system of, iv. 121-122.
 — — Objects of—Example, good conduct and decency, prevention of undue hardship, regard to health, security from fire, safe custody, future subsistence and good behaviour, religious, and other instruction, comfort, economy, subordination, iv. 122.
 — — General indifference to, because the rich feel contamination an evil to which the poor only are liable, v. 533.
 — — See Cells: Contract: Convicts: Dungeons : Hard labour : Imprisonment: Panopticon : Ventilation.
 Prison fees considered, i. 423-424.
 Prisoners—Judicial examination of, vii. 39-44. See Self-inculpativ Testimony.
 — for trial—whether they should be set to work, iv. 59-60.
 — Escape of. Responsibility for, i. 478.
 — Enlargement of punishment of, for conduct in confinement, iv. 26-27.
 — Adaptation of cells to facilitate their labours, iv. 74.
 — Liberated—Plan of a Provision for, as subsidiary to the Panopticon, iv. 165-171.
 Privacy, with regard to judicature and evidence, ii. 44 ; vi. 28, 351-380. See Publicity and Privacy.
 — Cases in which extraction of evidence should be subjected to, vi. 27-28.
 Private acts—Waste of the time of Parliament on, ix. 118.
 Private conditions—Rights and obligations attached to different, i. 343-358.
 Private judgment. Blackstone against the right of, i. 230.
 Private offences—Characteristics of, i. 139-140.
 — — distinguished from the other classes, i. 97.
 — — Divided into offences against the person, against reputation, against property, against condition, against person and property together, and against person and reputation together, i. 99-100.
 — — The genera of, i. 113-137. See Condition: Person: Property: Reputation.
 — — Division and subdivision of, iii. 164-165. See Offences.
 — — Characters of, iii. 172-173.
 Privation—The pains of, i. 19.
 Privative punishments or Forfeitures, i. 451-475. See Forfeitures.
 Privilege—Grants of, held immutable, ii. 404.
 Privileges—Rewards by the granting of, ii. 200.
 — Sieyes' doctrine as to, criticised, ii. 533.

Privy Council—Inquiry as to the method of summoning members to, for judicial business, and information on the subject, x. 430-431.

Prize. *See* Reward.

Prize court—Jobbing in, vi. 41 n.

Prize money—Arrangements regarding, in the Constitutional Code, ix. 381-383. *See* Defensive force.

Prize system—Abuses in the, ii. 215.

Prizes for discoveries, experiments, &c.—a service which Government may do to trade, iii. 71.

Probability and improbability—Relative, vi. 46. *See* Improbability.

Probabilities—an illustration of the practical use of arithmetic, viii. 161.

— Price's views on, vi. 243.

Probabilizing facts, in connexion with evidence, vii. 4.

Probates and Letters of administration—Incidence of the duties on, ii. 592.

Probatio—Roman division into *plena, minus plena*, &c., vi. 231.

Probation as an operation in procedure, ii. 25.

— Analysis of the operation of, ii. 60-61.

Probative, applied to the school exercises which are not for teaching, but for proving proficiency, viii. 44.

Probative force of evidence—The elements of, analyzed, vi. 220-223. Admits of degrees, 220. The ordinary degree, that which produces belief in mankind, ib. Legislator should provide for its being as great as possible, 221. By what circumstances increased—quality of witnesses—number—real evidence, ib. By what circumstances diminished, 221-223;—circumstances regarding source, 222—regarding shape, ib. Remoteness from seat of perception, 222-223.

— — how estimated, vi. 14.

— Sources of increase and decrease in, vi. 14-15.

— — and persuasion—Degrees of, how measured, vi. 16-17, 223-235. Importance of correct expression for the degrees, 223-228. Elements affecting the amount of persuasion in witnesses, 224. Ambiguity of ordinary language, ib.—application of mathematical, ib. A scale of persuasion, 225; application of it to witnesses, 225-227; to judges, 226-228; to appeal, 228; to pardon, ib.; to other cases where the same question moved, 229; where punishment administered *pro modo probationum*, 229; to scientific evidence, ib. Incapacity of ordinary language for expressing the degrees, 229-230. Attempts in England, 231-232. Infinite scale, though the only true one, inapplicable, 232-234. Objections of M. Dumont answered by the Editor of the ori-

ginal edition of *Rationale of Evidence*, 234-235.

Probative force—compared with trustworthiness, vi. 17 n *.

— — The utmost that a case is capable of need not be insisted on, vi. 233.

— — Questions of incredibility are questions of, vii. 80.

— — Instructions from the legislator to the judge for estimating, vii. 563-598. *See* Instructions.

— — of circumstantial evidence, vii. 64-68. No positive rules, (vi. 50-53) vii. 64. Search on all occasions for *Enprobative* suppositions, ib. The number of links in the chain of presumptions renders it less strong, 65. Psychological facts can never be considered conclusive—physical may, 66; yet physical should not be subject to absolute rules, ib. Warnings to prevent under and over valuation, 67.

— — of circumstantial evidence—Errors of legal systems in regard to, vii. 68-73. Insufficiency of the whole, on the ground of defect in, or want of, particular articles, 68-69. *Corpus delicti*, 69. Coke's theory of presumption, 69-70. General circumstantial, received to exclusion of special direct, 70. Wager of law, ib. Expurgatory oath, ib. Oath in supplement, 71. Facts excluded on ground of being weak, ib. Records of courts, 71-72. A single article set out as itself conclusive, 73.

— — of circumstantial and direct evidence compared, vii. 73-75.

— — of extrajudicially written and hearsay evidence—instructions concerning, vii. 134-137.

— — of transcriptitious and hearsay evidence compared, vii. 142.

— — loss of, to evidence, in passing from one medium to another, vii. 155.

Probity—Rules of, those which principally require legislative interference, i. 147.

— an ingredient in trustworthy opinions, ii. 388.

— excluded as a virtue on the part of a nation, ii. 537, 552, 555-556.

— Men in office arrogating to themselves, ii. 412.

PROCEDURE—JUDICIAL—Code of—Source of the reasons that should accompany, i. 162.

— — Code of—Initial Sketch of the, ii. 178-181.

— — Plan of the Code of, with reference to the other codes, iii. 204-205.

— — Diminution of uncertainty in, as a precaution against crimes, i. 558-559.

— — Principles of, ii. 5-181;—

— — Preface to Principles of, ii. 5.

— — Introduction to the Principles of, ii. 5-8; meaning of the term, 5. Adjec-

tive law, 6. Evils of the present system and interests producing it, *ib.* Arguments used for stopping the progress of improvement, 6-7. Efficacy of Public-opinion Tribunal, 7. Necessity of rejecting the Technical system, *ib.* Leading features of the author's system, 7-8.

Procedure—Judicial—General view of, in connexion with the ends of judicature, *ii.* 8-11.

— — Relation of, to the rest of the law, *ii.* 15-22. Two objects—power to fulfil the substantive law, and means of ascertaining 'ruth of facts, 15-16. Smallness of difference between the means in the penal and in the non-penal, 16-17. Ends of penal procedure, direct and collateral, 17. Juridical vexations—consumption of time, confinement, expense, and anxiety, 17. Delay, a suspension of the primary end of procedure, 17. Avoidance of it, *ib.* Avoidance of precipitation, 17-18. Ends of procedure, if correct, will furnish principles for trying propriety of regulations of procedure, 18-19. Mischiefs which will exist notwithstanding efforts to the contrary, 19. Analysis of these, 19-20. Observance of the whole comprised in the phrase, "rendering justice," 20. Distinction between real and apparent justice—necessity of procedure giving the latter as well as the former, 20-21. Prejudices reducing the alarm that would arise from want of the latter, 21-22.

— — Subject matters of, *ii.* 23-24.

— — All-comprehensive arrangements as to, *ii.* 24-28. Division into operations, instruments, and stages, 24. Operations—Application, Execution, Probation, Accommodation, 24-25. Instruments—personal, real, and written, correspondent to operations, 25-27. Judication, with relation to partition of territory, communication, &c., 27-28.

— — Practical general rules as to, *ii.* 28-33. Minimization of evil, by regard for ends of justice, 28. Rules for guarding against and compensating irreparable evils, 28-29. Rules for guidance of judge in exercise of his ulterior powers, 29-31. No inflexible regulations, 31-32. Substitution to inflexible rules, 32. Inquiry which side most likely to be in the right? 32-33.

— — between parties distant from each other, *ii.* 99-105. Pursuer personally repairing to defendant's judicatory, 99-100. Epistolary mode, 100. Difficulties from want of confrontation, and proposed remedies, 100-101. How testimony of witnesses to be dealt with, 101-102. • Ready written and real evidence, 102-103. Friendly Bondmanship, or Bail, 103-105.

— — before appellate judge, *ii.* 166-167.

— — Arrangements of for the purposes of

the proposed Equity Dispatch Court, *iii.* 409-427.

Procedure—Judicial—Every rule of, that does not bend must break, *iv.* 322.

— — Prayer of Petition for justice in relation to, *v.* 500-503. Personal appearance at commencement 500-501. Party himself, with exception of cases of mere information, 501. Arrangement of appropriate excuses that may be pleaded against obeying judicial mandates, *ib.* Instead of judge-made law, judges to propose amendments *in terminis*, *ib.* Proceedings to have regard to convenience, *ib.* All available evidence to be elicited, *ib.* The principle of suretyship to be given all practicable extent to, *ib.* Different forms in which it may exist, *ib.* Occasions for exacting security, 501-502. The form of eliciting evidence to be oral, recorded, or epistolary, according to paramount necessity, *ib.* Epistolary to be subject to oral examination where expedient, *ib.* No oath, and punishment for falsehood, *ib.* Series of disputes between parties to be entered into, and balance of satisfaction struck, 502-503. Minutiation of evidence, 503. Helpless litigants' fund, *ib.* Fines on parties in the wrong, *ib.* Language of procedure code to be made intelligible, *ib.*

— — Publicity and privacy considered with regard to, *vi.* 351-360. *See* Publicity.

— — Exclusion of evidence occasioned by blind arrangements of, *vii.* 537-542. Place good in a par with bad cause, 537. Secrecy of the Roman system, 538. Short time allowed for trial in England, 538-540. Examination by commission, with Gilbert's reasons for secrecy, 540-542.

— — in relation to imprisonment for debt—natural as distinguished from technical, *vi.* 135-136.

— — Blind fixation of times for operations of, *vii.* 239-240.

— — Letter to the Duke of Wellington on the reform of the system of, *xi.* 9-12.

— — English system of—Evils of, generally animadverted on, *ii.* 10-13.

— — Scottish system of, Judge-made, *v.* 5.

— — Position of, in a general division of the law, *ix.* 8.

— — Prescription or bearing of, to the Constitutional Code, and principles that should rule it, *ix.* 40.

— — Place that should be occupied by, in the Universal Code, *iii.* 162.

— — *See* Account taking Judicatories; Appeal; Application—judicial; Communication—judicial; Compensation; Counter-security; Demand-paper; Evidence; Execution; Forthcomingness; Hearing—initiator; Jury; Proxies; Quasi-appeal; Quasi-jury; Recapitulatory examination.

Procedure Law—Principles of, in reference

- to the Constitutional Code, ix. 25-27. Inseparable burthens—delay, vexation, and expense, 25. Minimization of burthens, maximization of benefits, the true object, *ib.* Difficulties to contend with where there is an unorganized law, as in England, 25-26. When there is a real law, little difficulty in bringing it to the notice of the judge—difference as to facts, 26. The field of evidence, and its department—forthcomingness, 27.
- Procedure**—Natural and Technical systems of, compared, ii. 169-178. Costs, 169. Long imprisonment *ib.* Imposition of fixed sums without regard to wealth or indigence, 169-170. Arbitrary fixation of time for operations, 170. Transference from Judicatory to Judicatory, *ib.* Writ and declaration in common-law suit, *ib.* General issue—distance of Judicature and fixed time for trial, 170-171. Proceedings by indictment, 171. Grand Jury, *ib.* Absence of parties—interest of professional lawyers, *ib.* Corruption of the public mind, 171-172. Extortion and oppression, 172. Diversification of modes of eliciting evidence, 172-173. Bill in equity, 173. Special pleading, 173-174. Irresponsibility of party for averments, *ib.* Written pleadings, 175. Diversity of actions, 175-176. Record, its irrelevancy and uselessness, 176-177. Interval between opinative and imperative decree in some criminal cases, 177. Needless concurrence, *ib.* Arrest in *mesne* process, 178. Absence of remedy to wives against cruelty of husbands, *ib.* Fundamental principles of natural procedure, *ib.*
- — — Arrangements of former contrasted with devices of latter, v. 8-14.
- — — Honest litigants go to courts of the former, dishonest to those of the latter, v. 22.
- — — distinguished, and the courts in which they are respectively used—in Scotch Reform, v. 7.
- Procedure**—Summary. Recording convictions on, vi. 414.
- — — and regular, generally contrasted, iii. 321.
- Procès-verbal**—an instance of extempore recordation, vi. 82.
- Processions**—Religious—Principles that should regulate the sanction or suppression of, ii. 514.
- Procrastination**, dilatoriness, &c., as indicative of motives, i. 204.
- — — Argument for, in the statement that the time for a measure is not yet come, ii. 432.
- Proctor**—uses excommunication as a means of getting his bill paid, vii. 425.
- Procurator mandate**—in the Constitutional Code, ix. 254-255.
- Procureur de Roi**—The French. How far his office differs from that of Attorney-General, iv. 405.
- Prodigals**—Popularity of, iii. 17.
- Principles of the interdiction of, considered, i. 332.
- Prodigality**—how far it should be discouraged by refusing relief to poverty, i. 314-315.
- Prevention of, as an argument in favour of the Usury Laws, iii. 5-7. Prodigals generally adopt other means, 5-6. If they can give security, will get at as low interest as others, *ib.* If they have no security, will not get at any interest, 6. Generally borrow among their friends, *ib.* Get credit from tradesmen, 6-7.
- Produce**—Right to, involved in title to land, i. 327.
- Production**, as a means of abundance, ix. 13-14. The increase of, natural, or by operation of law—latter deprecated, *ib.*
- Bounties upon, considered, iii. 59-61. See Bounties.
- Exemptions from taxes on, act as bounties, iii. 62.
- Profanation**—Classification of the offence of, in the Penal Code, iii. 171.
- Profession**—Choice of, as a duty of guardians, i. 347.
- Nature of, as a condition in life, i. 135-136.
- The mind strengthened for the pursuit of, by right education, viii. 11-12.
- Sensibility to the operation of the moral sanction as affected by, i. 457.
- Restrictions regarding, in connexion with punishment, i. 436.
- Whether men should be tempted from, to fill public offices, by high remuneration, v. 810-813.
- Professions of honesty**, &c., by individuals No regard to be paid to, iii. 526.
- Professional education** and monopoly considered, ii. 51.
- assistant—Reasons for permitting to a litigant, ii. 50-51; vi. 337-338; vii. 227 n ||.
- **Lawyers**—Provisions regarding, in the Constitutional Code, ix. 589-597. See Lawyers.
- opinion. The authority of, ii. 388-389.
- privileges and condition—Nature of, iii. 167.
- Professorships** that should be established in central towns, ii. 257.
- Proficiency-promising principle**, in the management of the Chrestomathic school, viii. 49-50.
- Profiles**—Publication of, a means of discovering criminals who have escaped, i. 558.
- Profit**—Participation in, by felons condemned to labour, as an inducement to work, iv. 12-13.

Profit from the labour of convicts, as an ingredient in prison discipline, iv. 50.

- Moral effects of the deriving of, by the support of particular opinions, ii. 264.
- of an offence—Definition of, i. 87 n.†.
- of an offence, should be outweighed by the punishment, i. 399-400.
- of punishment—how to be estimated, i. 398-399.

Profits of stock-brokers and bankers—Proposal to obtain revenue by taxing, ii. 599-600.

- Average, are in the inverse ratio of productive capital to expenditure, iii. 57.
- Application of, in the Panopticon on the contract principle, iv. 48.

Profligacy—Political. Exhibition of, in Hamilton's Parliamentary Logic, ii. 385.

- Fallacy of considering the resignation of emolument a mark of, ii. 464-465.

Progress-registration principle in the management of the Chrestomathic School, viii. 49.

Prohibited degrees with relation to marriage, i. 350.

Prohibition—Commercial. Mischievousness of, ii. 549.

- on rival productions—Evil of, as compared with bounties, &c., iii. 63-64. In what cases useless, 63. In what hurtful, 64. A refusal to participate in the natural advantages of other nations, ib. Custom-house expense, ib. Selfishness and immorality, ib.
- on rival imports—either inefficacious or mischievous, iii. 64.

Prohibitory and restrictive commercial system—The, discussed, iii. 88-100. *See* Restrictive.

Projects—Utility of a treatise on, distinguishing useful, from impostures, iii. 51-52.

Projectors in arts and manufactures—Defence of, against the effect of the laws against usury, iii. 21-29, 47-52. The term is one generally used in reprobation, 21. The restriction strikes against all improvement and amelioration, 21-22. Loans on high interest peculiarly adapted to, 22. Usury laws have not the effect of separating the good from the bad, but merely the old established from the new, 22, 48. Projectors the cause of national prosperity, which would be increased by removal of trammels, 23, 49. These, instead of suppressing the bad, merely narrow the field of both good and bad, 24. A less strong case than the restraint of prodigality, 25. The requisites of genius and courage make projectors a small number, ib. Impertinence of the legislature interfering with the arrangements people think best for themselves, 25-26. From greater ex-

perience skill and civilisation, future projects likely to be more successful than past, 26. Loans infer the benefit of the lender's opinion, 27. Though all the projectors themselves should be ruined, yet the community may be benefited, ib. Illustration of the judgment misled by an expression, 28. Causes of Smith's error, 28-29. Remedy—expunging the Usury laws, at least as regards projectors, 29. Difficulties which ingenious men have to combat with in introducing their works to notice increased by the law, 49-50.

Prolixity, as contradistinguished from redundancy, x. 74.

- in laws—Evils of, iii. 208.

Promise—Ends served by referring the connexion between governors and governed to a, i. 269-270.

Promises—Performance of—how far an absolute principle, ii. 224.

- divided into unilateral and bilateral, iii. 191-192.

Promissory oaths—Nature and effect of, vi. 29.

- False distinction of assertory from, v. 191-192.
- The abuses they may be made to support, illustrated, ii. 408-409.
- Arguments as to the inefficacy of, abridged, v. 514-515. *See* Oath.

Promotion—Anomalies in the system of, in the British army, ix. 363.

- Military arrangements for, in the Constitutional Code, ix. 358-366. *See* Defensive Force.

Prompting witness by suggestive interrogations, vi. 394.

Promptitude of answer—a security for truth in examination of witnesses, vi. 383.

Promulgation of the laws urged, i. 323.

- Essay on the, i. 157-163. Neglect of, in modern times, 157. Would convert unwritten into real law, ib. Impossibility, however, with such a mass of matter as the English laws, ib. Natural notoriety of some laws, 158. Promulgation of the Universal code—Schools, Churches, different places, translations, 158-159. Particular codes—applicable to conditions in life, contracts, 159. *Promulgation of the reasons*, 160-163. For making the sovereign acquainted with them, 160. Making them more interesting and comprehensible, 160-161. Assistance to memory, 161. Disarming popular objections, ib. Assistance to judicial interpretation, ib. Aid to perfectibility of the law, 161-162. Tendency to communion of legislation, by letting nations know each others laws, 162. Sources whence the reasons should be drawn in the Civil, Penal, Procedure, and Financial codes, ib. Reasons assigned in Police

Finance and Political Economy—Turgot and Necker, 162-163. Utility should be the base of reasons, 163.

Promulgation of the laws—Blackstone's notions of, attacked, i. 233.

— — — Passage in Blackstone presumed to favour, i. 294-295.

— — — as the general object of their form, iii. 236-237.

— — — Want of provision for, in England, iv. 312.

— — — Plan for, by the French National Assembly, criticised, iv. 311.

— — — Enforcement in the absence of, is tyranny, vi. 519.

Promulgation paper for publishing the tenor of laws, applicable to particular contracts, vi. 65, 67, 522, 528, 578.

— — — with forms of deeds, &c.—Utility of issuing, iv. 455.

Pronouns—Invention of, by the operation of abstraction, viii. 326.

— divided into substantive and adjective, viii. 348.

— substantive—bear the same relation to other parts of speech as the noun-substantive, viii. 188.

Pronunciability as a property desirable in language, viii. 305.

Pronunciation—Remarks on, x. 569.

Proof—Denial of. Remedy for, ii. 163-164.

— Burden of, vi. 136-139. *See* Burden.

— Full—the term discussed, vi. 231.

— Necessity of founding the assumptions of legislative assemblies on, ii. 364.

— through examination of parties, &c., in proposed Dispatch Court, iii. 418.

— *See* Evidence.

Propensities—proper subjects of the attributives good and bad, &c., i. 216-217.

— Vicious. Proper penal systems should keep a perpetual check on, iv. 175.

Property—Nature of, vii. 81 n.

— Definition of, i. 308-309.

— What constitutes, iii. 182.

— What constitutes, in an individual, i. 25.

— the creature of law, i. 307, 308-309.

— Laws favouring the security of, the best for advancing national wealth, iii. 203.

— as an object of security by the law, iii. 213.

— as an object of security by the Constitutional Code, ii. 270 n.

— Evils of compelling the owner to dispose of, i. 321-322.

— Justifiable limitations on the right of, i. 313-314 n.

— Attacks upon the security of, i. 318-321.

— Evils resulting from attacks upon, i. 309-311. Evil of non-possession, 309. Pain of loss, 310. Fear of loss, ib. Destruction of industry, 310-311. Impracticability of a continuous equal distribution, 311-312

Property—General partition of, discussed, i. 358-364. *See* Levelling System.

— General partition of. Effect that would be produced by, i. 303.

— General partition of. Democratic representatives have no interest to propose, iii. 471, 475.

— General partition of, impossible and not designed, iii. 605-608.

— General partition of. Conditions to embarking in, iii. 605-606.

— Objects of, distinguished from those of condition in life, i. 108-110, 135-136.

— Titles which confer a right of, i. 326-330. *See* Titles.

— Disposal of, by intestate succession, i. 334-336.

— Deficiency of means of acting on, by English procedure, ii. 104.

— Seizure of—purposes for which it may be authorised, ii. 117.

— How the nature of, affected by the requisites for proof of title, iii. 134 n.

— Shaking the foundations of—Use made of allusions to, iii. 390 n.

— The declaration of an imprescriptible right of, in the French Declaration of Rights, criticised, ii. 503.

— Inviolability of. Terms of the first French Declaration of Rights as to, criticised, ii. 521.

— as one of the rights of man. Clauses as to, in the second French Declaration, criticised, ii. 524-526, 529.

— Sieyes' doctrine of the liberty of disposal of, criticised, ii. 532-533.

— Principles that should rule the attachment of, for debt, &c., iii. 353-354.

— Security of—how far dependent on a good system of law language, iii. 271.

— Legitimate influence of—uses made of the term in political disputes, iii. 483-484, 548.

— Fallacy of its being the only pledge of attachment to country, iii. 560.

— Men of, would suffer less than labourers, by a general partition, iii. 608.

— a subject of Preappointed evidence, vi. 508.

— The amount of felicity shown not to rise with the arithmetical ratio of, ix. 15-16.

— The word employed instead of the term "rich men," as a means of political delusion, ix. 76-77.

— Transfers of. Plan for a register of, in the Constitutional Code, ix. 633-634.

Property—Offences against, a division of private offences, i. 99-100.

— — — Peculiarities connected with, i. 108.

— — — Divided into eighteen genera, i. 116-118.

— — — Influence of time and place on, i. 176.

— — — as a subdivision of private of-

- fences, iii. 165-166. Divided into those affecting the right, and those affecting the use, ib.
- Property—Offences against. As a subdivision of self-regarding, and of semi-public offences, iii. 168.
- — — How satisfaction for, to be measured, i. 372.
- Property and person—Offences against, i. 100, 119.
- Property—Real—Outline of a Plan of a General Register of, v. 417-435.
- — — Commentary on Mr Humphrey's outline of a code regarding, v. 387-416.
- — — See Real Property.
- Property qualification of members of Parliament—Illustration of the operation of, iii. 484.
- Property tax—Objections to a, ii. 518.
- — — Incidence of a, ii. 580.
- Properties to be given to a lot of punishment, i. 402-406.
- Prophylactics—Etymology of, and place in the Chrestomathic system of Instruction, viii. 36.
- Propinquity and remoteness in the measurement of Pleasure and Pain, i. 16.
- Proposal—Codification, addressed to all nations professing liberal opinions, iv. 535 *et seq.*
- Proposition—No determinate information conveyable except in a complete, viii. 81.
- How distinguished from a sentence, viii. 187.
- Three elements in a—name, attribute, and copula, viii. 186.
- Accessory ideas of words which amount to—Gender, number, &c., viii. 190.
- Distinction between, in a mathematical and in a logical view, viii. 104 n.
- Mathematical—Not true unless it have some physical representative, viii. 163.
- Propositions, contain four parts; subject, quality, relation, and existence, viii. 337.
- Words are integers of, viii. 188.
- The production of clearness in, as a branch of Logic, viii. 242-253. See Exposition.
- Imperfect views of the nature of, by the Aristotelians, viii. 337-338. Divided by them into only two elements instead of four, ib.
- The matter of all language, whether civilized or barbarous, viii. 321.
- Discourse when first uttered must have embodied, viii. 322.
- Terms formed out of, by analysis, viii. 322.
- Analysis of the matter of, and descriptions and definitions of the various kinds of, viii. 333-334.
- Names of subjects of, analytically considered, viii. 335.
- Predicative branch of, considered, viii. 335-336.
- Propositions expressive of the state of the perceptive faculty, considered as having, for the source of the perception, a corporeal object, viii. 336-337.
- Propositions in Geometry—Proposal for proving, in the purely verbal method, without the aid of diagrams, viii. 155-160.
- Proprietors—Landed—Their corruptive power in elections, iii. 479-482.
- Prorogations—a device of the monarch to get rid of opposition and trouble in Parliament, ix. 164-165.
- Prosecution. Impediments to, a cause of impunity of crime, i. 559.
- of offences—Rewards for, and punishment for neglecting, ii. 197.
- of offences—Impediments to, in the expense, &c., ii. 213-214.
- Prosecutions—Criminal—Hardship and mischief to the public in throwing the cost and responsibility of, on individuals, iv. 402-403.
- for offences—The defective system of, both according to English and Roman law, viii. 538-539.
- Prosecutor, gives evidence before grand jury, without cross-examination, vi. 472.
- Testimony of, according to English practice, vii. 489-496. See Plaintiff.
- The taking the evidence of, in criminal, and not in civil cases, considered, vi. 475.
- in case of reward—Exclusion of testimony of, vii. 490-492.
- Deposition of, before a justice, in case of felony, vi. 471-472.
- Prosecutor—Public. No necessity for his finding security, ii. 107.
- — Provision for, in Constitutional Code, ix. 570-577. See Advocates—Government.
- Prosecutors—Voluntary—Arrangements as to, in Plan of Judicial Establishment proposed for France, iv. 385-387. Not bound to prosecute, 385. Cases where one may prosecute in preference to Pursuer-General, ib. Duty by death, &c., or relinquishment, to devolve on Pursuer-General, 386. Reimbursement, ib. Rewards, ib. Precautions against collusion, ib. Oath, 386-387. Lodging information, 387. Provisions for safety of informer on the one hand, and against malicious mal-information on the other, ib.
- Prosecutors and informers—Essay on the best means of supplying, iv. 389-406. Three methods—leaving open to individuals at large; having fixed official; mixture of both, 389. To induce voluntary prosecutors, there must be an interest, 389-390. Giving them, in all cases, a sufficient pecuniary one expensive, 390. Uncertainty of its sufficing, ib. Odium and prejudices, ib. Gives pardon-power to individuals, ib. Difficulty in finding a

- fund for reward, *ib.* An uncertainty of which delinquency would take advantage, 391. Unjust burthen on individuals, *ib.* But though there should be an official Prosecutor, voluntary prosecutors ought not to be excluded, 391-392. They increase the chances of the law being exercised, 392. Prevent arbitrary dispensing power, *ib.* If excluded, Public Prosecutor would create a despotism, *ib.* Such an officer, unless responsible to the people, will be subservient to the Crown, and even the more so that irremovable, 393-394. Would keep out informers, of whom eye-witnesses are the best, 394-395. Prosecutor and witness should not be deemed incompatible, 395. Especially absurd to hold them so in cases of reward for conviction, 396. Evils of sleeping laws, 397-398. Means of securing informers and prosecutors, 398-404. Difference between the English and French crown-officers and the author's plan, 404-406.
- Prosocial-non-significant exercise, or making nonsense verses—Uses of, viii. 46.
- Prospective view of the Rationale of Evidence, vi. 203-207.
- Prosperity—National, caused by the enterprise of projectors, &c., iii. 23.
- Modifications of the matter of, as objects of security by the laws, iii. 213.
- Prostitutes—their social position, and its causes, i. 545-546. Effect of their being cut off from society, 545. Remedies, 546.
- Prostitution—Effects of, on the individuals, and on society, i. 545.
- Protection of the law—Forfeiture of, as a punishment, i. 474-475, 513-514.
- Protector and protégé—Influence of connexion between, on testimony, vi. 160; vii. 576.
- Protest against Law Taxes*, ii. 573-583.
- Protests in the House of Lords. Nature and effect of, ii. 316-317.
- Protestants—Extent of sensibility of, with regard to religion, i. 174.
- Intolerance of, to Catholics, ii. 417-450-451.
- Prothonotaries in Common Pleas—their influence in creating the special jury system, v. 76-77 n.
- Proved—meaning given to the word, vi. 230; vii. 4.
- Provisional authentication distinguished from definitive, vii. 183-184.
- The distinction between definitive and, unknown to English law, vii. 188.
- by archetypal draught, vii. 186.
- Provisional decision, in case of detention of evidence, vii. 379-380.
- Provisional sequestration as a remedy for the effects of judicial delay, vii. 380-383.
- Provisions—Effect of cheapness of, ii. 549.
- Provocation as an extenuation of injury, i. 165-166, 168.
- Kind of that will extenuate an offence, i. 79.
- Influence of religious prejudice on the extent of, i. 174.
- Proxy—Conducting litigation by a, ii. 35-36.
- Proxies—Admittance of appearance by, in judicial procedure, ii. 49-52. Circumstances of disability with respect to the party, in which they may be employed, 49-50. Litigational proxies, professional and unprofessional, 50-51. Remedy where they make prejudicial admissions, 50. How far professional lawyers to be employable, and to have exclusive privilege, 51. Application by unauthorized proxies, for prevention of damage, 51-52.
- Prudence—Nature of the quality, i. 143.
- Private ethics—not legislation—can enforce, i. 146.
- Extra-regarding, and self-regarding, as elements of official deportment, ix. 307-308.
- Prudential-præterition Fallacy—leaving an unanswerable argument unnoticed, x. 521-522.
- Prudential impracticability defined, vi. 328 n t.
- Prussia—Law of, noticed, i. 319; vii. 18.
- Pensioned counsel in, iv. 319.
- illustrative of the safety of popular education, viii. 20.
- Ranks of nobility in, ix. 87.
- State of society in the army of, ix. 422.
- The ineligibility of, as an ally for Britain in 1789, x. 207-208.
- Letter to Bentham on the Political position of, in 1794, x. 297-300.
- Advantages of the registration of land illustrated in, x. 350.
- Psammographic (or writing on sand) principle, in the management of the Chrestomathic School, viii. 53-54.
- Psychical entities—Logical uses of distinguishing from physical, iii. 286.
- Psychological causes of correctness and completeness, and the reverse, in testimony, vi. 247-250.
- Psychological facts—a better field for mendacity than physical, vi. 246.
- — Improbability as regards, vii. 113-114. Inapplicability of the term impossibility, 113-114. Absence of conformity in, 114. Nature and effect of what is termed freedom of the will, *ib.*
- — Inquiry as to, necessary in evidence as to crime, vi. 2.
- — and physical facts distinguished, vi. 216-217.
- Psychological impossibility considered as a disprobative fact in evidence, vi. 47.
- Psychological Pathology—a term for the Philosophy of the intellectual powers, viii. 88.

Psychology—Use of extending the employment of the word matter to, iii. 287-288.

— Position of, in a general division of Arts and Sciences, viii. 84.

Public—when suits considered as, ii. 80.

Public—The. Protected by protection to individuals, i. 321.

— — Means of protecting from particular offences, i. 553-556.

— — Different classes of, in relation to the forming a judgment, ii. 313.

— — How far costs of litigation should be defrayed by, ii. 112.

— — Being benefited by litigation, should share in the expense, ii. 576.

— — Appropriation to, of successions, which would otherwise fall to relations beyond the prohibited degrees, ii. 585-598. *See* Supply without burden.

— — the best for watching judicial proceedings, found in metropolis, iv. 348-349.

Public Account-keeping—Essay on, v. 383-386.

Public discussion—Letters on, to the Spanish people, ii. 275-297.

Public esteem—the most efficacious reward of passive virtue, ii. 233.

Public force—Offences against, as a subdivision of public offences, iii. 169-170.

Public houses—Licensing system of—Correspondence with O'Connell on the injustice of, xi. 24-25.

— — Counteracting tendency of holding Benefit Societies in, viii. 414.

Public instruction—Codification and; papers on, addressed to authorities in the United States, &c., iv. 451-533.

— — Circular on, to Governors of United States, iv. 531-533.

Public meetings. Reasons for liberty to, ii. 281.

— — *See* Meetings.

Public offences distinguished and analyzed, i. 101-104. Against external security, 101-103. Against justice, ib. Against the preventive branch of the police, ib.

Against the public force, ib. Against the positive increase of the national felicity, ib.

Against the public wealth, ib. Against population, ib. Against the national wealth, ib.

Against the sovereignty, ib. Against the national interest in general, ib.

Against religion, 101, 103-104.

— — Characteristics of, i. 141.

— — The place they should occupy in the Code, iii. 162.

— — Subdivisions of, iii. 169-171.

— — Characters of, iii. 173-174.

— — particularly unfit for judicial privacy, vi. 369-372.

Public offices, as repositories of Preappointed evidence, vi. 553-561. *See* Official Evidence.

Public officers—Proposal for publishing the

emoluments, &c., of, to raise competition, i. 554.

Public officers—How to ensure the responsibility of, i. 548.

— — Salaries to, sufficiently large to secure them from temptation, i. 548-549.

— — Emoluments of. *See* Offices.

Public opinion—Moral influence of, vi. 369-372.

— — Sinister interest of, i. 530-531.

— — Punishment by, i. 453-467.

— — Mischiefs produced by directing it against an individual, in the form of contempt, i. 377.

— — Utility of pressing, into the service of the laws, i. 563.

— — Cases in which it does not correspond with the duty of the legislator, i. 464, 531.

— — Influences of on judicature, aided by appeals, ii. 165-166.

— — Influence that the direction of, might have in eradicating fallacies, ii. 486-487.

— — Just influence of, on elections, iii. 448-449.

— — Influence of, on judicial aptitude, iii. 396.

— — Existence and influence of, among communities of criminals, iv. 138.

— — Securities for the expression of, adapted to a Mahomedan state, viii. 584-585.

Public-opinion Tribunal—General view of the operation of, viii. 561-563. Publicity in the first place to rulers' acts—next to opinions formed on them, 561. The people's, being both judges and subjects, reconciled—exercise of influence, ib. Those particularly cognizant considered as committees, 562. Numbers of judges rising with the extent of the oppression, ib. Sentence, the obstruction of obedience—consequences to which it may lead, ib. No regularity in the conduct of this tribunal, but essential to protection, 563.

— — Attributes of the official judicatories enumerated, for the purpose of comparison with, viii. 563-564.

— — Constitution of, as a judicatory, viii. 564-566. At the head of the functionaries, the newspaper press, 564-565. Analysis of the elements of the tribunal, as consisting of the public at large, 565. The merely speaking members the foundation—these cannot be extinguished, 565-566. The committees and sub-committees—according to the connexion which they have with any particular transactions, 565-566.

— — Functions of, compared with those of the official judicatories, viii. 566-568. Enumeration, 566. Application to news papers receiving accusations, 567. Defences, ib. Receiving evidence—through casual correspondence, &c., ib. Expression of opinion and judgment, 567.

Diffusion and execution of judgment, 567-568.

Public-opinion Tribunal—Power of, compared with that of the official judicatories, viii. 568-572. Means of execution and effect—number of the persons who concur with the unofficial judicatory, a counterpoise to the physical force of the official, 568-569. Extent of the incorporeal field—the subjects on which decision may be given, 569. Defect in the party divisions, ib. Aristocracy and democracy—former constituting opponents to the free exercise of the judicatory, 569-570. Circumstances which turn the scale in favour of freedom—disagreements as to succession and share of power, division of parties, &c., 570. The competitions of statesmen—a perpetually-acting cause of weakness in a monarchy or aristocracy, 570-571. A disadvantage to the Public-opinion Tribunal, in the incapacity to act in concert—local distance and impediments thrown in the way by adverse governments, 571-572.

— Actual power of, in the average case, is as the number of suffrages, viii. 572.
— in relation to the Constitutional Code, ix. 41-46. Though called opinion, operates by the anticipation of action springing from it, 41. To be considered as in full assembly, or in committee, ib. Cases where obligatory effects directly follow—jury an example, ib. Operation of the tribunal without expression, in its sentiments being anticipated by persons in power, 42. Facilities for enabling the tribunal to act; notices on public offices of their purpose, hours of attendance, &c., ib. Admonitory rule applicable to functionaries, 42-43. Special rules against official insolence, 43. Reason for strengthening the tribunal—it is a support to good government, an impediment to bad, ib. Composed of two sections—aristocratic and democratic, ib. The latter have the general interest, the former their own peculiar, at heart, 43-44. Subdivision of the aristocratic into political parties, 44. The aristocratic have an interest in the commission of crimes, as they have power to obtain impunity or privilege—the democratic not, ib. Hence the judgment of the aristocracy worked in their own favour, 45. This illustrated in the necessity of juries to check the sinister interest of judges, ib. Neither section without errors, but democratic in maturity comes nearest the truth, ib. Weight of individuals of the aristocratic party—principle to restrict their influence to opinions, where their educational skill useful, ib. Influence of the aristocracy through the operation of taste, 45-46. Difficulty of drawing any abso-

lute line of distinction between the two classes, 46.

Public-opinion Tribunal—The composition of, as a recognised judicatory, by the Constitutional Code, ix. 157-158. Recognises those who are excluded from the supreme constitutive, ib.

— Functions of, as a recognised judicatory, by the Constitutional Code, ix. 158-159. Statistic Function, 158. Censorial, ib. Executive, ib. Melioration-suggestive, ib. Heads for noticing imperfections in the law when amendments suggested, 158-159.

— Securities to, against the legislative and judicial departments, in exercising the functions assigned to it by the Constitutional Code, ix. 159-160.

— Instructions to, to protect against fallacies the system of instruction and qualification for candidates for office, proposed in the Constitutional Code, ix. 293-294.

— Law Reforms to be laid before, ii. 7.

— Cases where judges, &c., brow-beat witnesses, should be laid before, vi. 408.

— Influence it would have in making litigants tell truth, if examined in open court, vii. 230.

— A committee of, called Quasi-jury, to act as assessors to judges, ii. 141-161.

— Juries a committee of, ii. 131.

— Certainty and expedition of its proceedings, i. 458.

Public peace—Disturbance of. Vague use of the term in indictments for sedition, v. 258-259.

Public prosecutor—Advantages of a, ii. 238.

— Mischiefs occasioned by the want of, in England, iv. 403.

— Provision for, in Constitutional Code, ix. 570-577. See Advocates—Government.

— and Defender, to act for the monarch, the public, and the poor, in the Plan of Judicial establishment proposed for France, iv. 384-385.

— See Advocates—Government.

Public purse—Frauds against, supported by prejudices, i. 465-466.

Public services—Pecuniary and honorary rewards for, ii. 216-218.

Public spirit—The oscillations of, x. 145.

Public treasure—how far it should be liable to refund the losses suffered by offences, i. 386-388.

Public works—Engagement of government in, shows that private capitalists have not confidence in getting the necessary facilities, iii. 67.

Publican—A man converted into, by ex-communication, i. 515.

Publication of accounts in which the public are interested, i. 554-555.

— of accounts of contractors for prisons, iv. 48.

— of legislative debates, vi. 78-79.

— as a security for evidence, vi. 26.

— Means of affecting for evidence, vi. 27.

— of evidence of doubtful veracity, in the newspapers, &c., as a safeguard from deception, vi. 320.

— with regard to deeds—a term used instead of authentication, vi. 550.

— system of, in connexion with the office of Prime Minister in the Constitutional Code, ix. 209-212.

Publicity in Legislative Assemblies, ii. 310-317. See Legislative Assemblies.

— with regard to votes of Legislative Assemblies, ii. 367-370. Should be the general rule, 367-368. Cases where it may be dispensed with, 368-370.

— in the operations of the foreign department, urged, ii. 554-560.

— Means of providing for, by architectural arrangements, in those departments of the official establishment where it is required, ix. 325-333. See Ministers Collectively—architectural arrangements.

— Necessity of, for laws, vi. 77-78.

— Subjects of, for giving operation to the Public-opinion Tribunal, viii. 572-573.

— with relation to offences—its uses, and its obstacles in fear, indolence, and poverty, viii. 577-579.

— The only protection against judicial oppression, ii. 8-9.

— No necessity for, in accusation, if preserved in judicature, i. 573-574.

— Use of, in retribution for offences against honour, i. 381-382.

— the soul of justice; various shapes in which it is contributory thereto enumerated, iv. 316-317.

— requires to be conjoined with power of appeal to be perfectly efficacious, iv. 340.

— the great safeguard against bribery in English judicature, v. 341.

— as a security for trustworthiness of evidence, vi. 26-27, 284-285.

— as a feature of the Law Tribunals of the Constitutional Code, ix. 493-494.

— Means of securing, in Judicatories, by the Constitutional Code, ix. 535-537.

Publicity and privacy—as applied to judicature in general, and the collection of evidence in particular, vi. 351-380;—

— preliminary explanations, vi. 351-354. Relative terms—highest privacy one person, 351-352. Former cannot exist—latter may, ib. Publicity should be rule—privacy exception, ib. Topics present—
Vol. XI.

ing themselves for consideration, 353. Means of publicity, natural and factitious, 354. Instruments of privacy, ib.

Publicity and privacy—uses of publicity to collection of evidence and to procedure, vi. 355-359. Check on mendacity and incorrectness, 355. A security for correctness of records, ib. Protects from arbitrariness of judge, ib. A security for the judge's reputation, ib. Makes the court a school of morals, 355-356. All persons should be free to take notes of the evidence, for the perpetuation of these advantages, 356. Same reasons apply to publication of evidence, and of remarks, 357. Has had effect of making judge specify reasons, ib. Argument by Oughton—that publicity gives opportunity for witnesses to conspire, combated, ib.; that they might act in fear of resentment of parties, 357-358. Presence of the Bar, how far advantageous, 358. How far appeal may be a succedaneum to publicity, 358-359.

— — exceptions to the principle of universal publicity, vi. 359-368. In what respects publicity not necessary, 359-360. Objects for which exemption from it may be sought, 360. Preservation of judge, parties, &c., from violence and annoyance, 360-361. Preventing mendacity-serving information, 361-362. Prevention of disclosure which may tend to non-forthcomingness, 362-363. Preservation of reputation and family peace, 363-367. Regard to decency, 367-368. Preservation of state secrets, 368.

— — — precautions to be observed in the application of the principle of privacy, vi. 369. Concealment should not be by fixed rules—should not exceed what is necessary—should not be the attribute of a particular court, ib.

— — — cases particularly unmeet for privacy, vi. 369-372. Crimes, especially public ones, 369-372. The judge alone should not have right to seclude such cases, 370; nor should he at instance of prosecutor alone, or defendant alone, or both, 370-372. A middle course suggested where secrecy necessary, 370.

— — — Errors of Roman and English law on, vi. 372-380. General sources of errors—the interested parties by whom the laws are made, 372-373. Publicity the leading principle of English—secrecy of Roman, 373. Secrecy in equity courts, and Gilbert's reasons, 374. Wife alienating land with concurrence of her husband, 375. Secrecy before Master in Chancery and other like officials, 375-376. Publication of trials, 377. Affords opportunities of obtaining ulterior evidence, ib. Baffles alibi, 378. The French method of solici-
U *

- tation, 379. Inapplicability in this country, 380.
- Puffendorf—An illustration from, on the extent to which judges should have a suspensive power, iv. 313.
- noticed, i. 150 n.†, 341; ii. 524; iii. 158, 220, 292; viii. 128 n.
- Pugatcheff—Imposture of, referred to, i. 568.
- Puget—tutor of the young Grand-Dukes of Russia—Anecdotes of, by Dumont, x. 408-409.
- Pulteney—William, Earl of Bath, noticed, iii. 531; v. 40.
- Pulteney—Sir William—Correspondence with, on charges of ministerial malversation as to the Panopticon, x. 384-386.
- — Letter to, on the Panopticon Penitentiary project, xi. 121-123.
- Punctuation—Laws of, how far distinctly established, vi. 461.
- PUNISHMENT as distinguished from calamity, i. 15.
- Adjustment of, to circumstances influencing sensibility, i. 32.
- What to be looked to in an act, with a view to, i. 36.
- Effect of the applying of, i. 70.
- reasons for applying, to certain actions as crimes, i. 81-83.
- General view of the ends of, i. 83 n.
- Cases unmeet for, i. 83-86;—
- unmeet where it is groundless, inefficacious, or unprofitable, i. 83-84.
- Cases in which it is groundless, i. 84. Where injured party has consented, ib. Where the mischief outweighed by benefit, ib. Certainty of adequate compensation, ib.
- Cases where it must be inefficacious, i. 84-85. Where it is not assigned before the offence, 84. Where unpromulgated, ib. Deprivation of will—Infancy, Insanity, Intoxication, ib. Ignorance of the penalty, from unintentionality, unconsciousness, or missupposal, 85. Danger or fear of mischief counteracting the punishment, ib. Physical incapacity to obey the law, ib.
- Cases where it is unprofitable, viz., from the evil of it overbalancing that of the offence, i. 85-86.
- Cases where it is needless, i. 86.
- The properties to be given to a lot of, i. 91-96. Variability, 91. Equability, ib. Examples of unequable punishments—Banishment, Pecuniary penalty, 91-92. Commensurability, 92. Method of measuring by making addition with increase of offence, ib. Characteristicalness, ib. Retaliation, ib. The appearance, not the reality, that is efficacious to example, 92-93. Exemplarity and frugality, 93. Subserviency to reformation, ib. Application of this property to particular offences, 93-94. Efficacy to disable the offender, 94. Dif-

- ferent methods of accomplishing this, ib. Subserviency to compensation, ib. Absence of unpopularity, 94-95. Remissibility, 95-96. Recapitulation, 96.
- Punishment—Cases in which it is efficacious, distinguished from those where private Ethics regulates, i. 142-148.
- Impropriety of founding it on the character of motives, i. 215.
- Inefficacy of, as a preventive, without satisfaction, i. 371.
- Rationale of, i. 388 *et seq.*
- Dumont's advertisement to the Rationale of, i. 388-390.
- Definitions and distinctions concerning, i. 390-395. Double application of the term, 391. Acts which constitute punishment, ib. Distinguished from other evils by intention of inflictor, ib. Objects aimed at in punishment, as directed against positive and negative offences, 392-395. Practical uses of observing the objects, 395.
- Cases unmeet for, i. 397-398. Cases in which it is groundless, 397. In which it would be inefficacious, ib. In which needless, 397-398.
- The ends of, i. 396-397. Particular and general prevention, ib.
- Expense of, i. 398-399.
- Measure of, i. 399-402. Should always exceed profit of offence, 399-400. Expense may rise with extent of mischief, 400. Punishment of greater offence should make the less preferable, ib. Motive of restraint corresponding to every portion of the mischief, 402. Circumstances influencing sensibility to be considered, ib. Increase in magnitude where deficiency in certainty or proximity, 401-402. Habit to be suppressed, 402. Special circumstances influencing quantity, ib. Simplicity of the code to be considered, ib.
- Properties to be given to a lot of, considered in the *Rationale*, i. 402-406. Variability, 402-403. Equability, 403. Commensurability, ib. Characteristicalness, 403-404. Exemplarity, 404. Frugality, ib. Subserviency to reformation, ib. Disablement, 404-405. Compensation, 405. Popularity, ib. Simplicity of description, 405-406. Remissibility, 406.
- Popularity with reference to, i. 411-413.
- Properties of, viz.—with relation to the simply afflictive, i. 415-416. The complex afflictive, 418-420. With relation to imprisonment, 424-429. With relation to banishment and relegation, 434-435. With relation to laborious punishments, 439-441. With relation to capital punishment, 444-450. With relation to the punishments of the moral sanction, 456-458. With relation to simple ignominious punishments, 463-467. With rela-

- tion to pecuniary forfeiture, 468-469. With relation to corruption of blood, 482-483. With relation to transportation, 490-497. With relation to the Panopticon Penitentiary, 498-503.
- Punishment**—Random, viz.—forfeitures against third parties, deodands, exclusion of witnesses, i. 485-489.
- Evil of making its extent depend on accident, i. 496-497.
 - Proper seat of, i. 475-490. Misseated distinguished from groundless, 475. Vicarious, and extravasated, ib. Impossible to confine it entirely to the guilty—sufferings of relations, &c., 476. Rules concerning naturally extravasating punishment, 477-478. Apparently, but not really misseated—viz. civil responsibility, 478. Varieties of misseated punishment—Vicarious—Transitive—Collective—Random, 478-479. Vicarious considered, 479-480. Transitive, 480-482. Disadvantages of the Transitive, 482-483. Collective punishments, 483-484. Random punishments, 485-489. Cause of the frequency of misseated punishments, 489-490.
 - Defeazance of, i. 520-525. By Pardon, 520-521. By length of time, 521-523. By death of parties, 523-525.
 - by retaliation, defined, and the offences it is inapplicable to enumerated, i. 409-411.
 - The most simple and early adopted means of suppressing crime, i. 533.
 - always involves an evil, and should be avoided where there are substitutes, i. 533-534.
 - Diminution of uncertainty as to, i. 558-559.
 - Effect of, with regard to mischiefs of the first and second order, in relation to procedure, ii. 20-21.
 - Inapplicability of unbending rules to, ii. 31.
 - Degrees in the scale of affluence, how measured for the purpose of, ii. 110-111.
 - Increase of, in case of groundless appeal, recommended, ii. 115.
 - of an innocent person—Measure of actual effect of, ii. 133.
 - applicable to actions only—not to dispositions, ii. 231.
 - of an irreparable nature—security from during appeal recommended, ii. 169.
 - as the counterpart of reward, ii. 193-194.
 - Exemption from as a reward, ii. 196-200.
 - and reward combined, ii. 197-198.
 - and reward, the respective fields of influence of, in the public service, marked out, ii. 204-208.
 - less simple for selection than reward, ii. 216.
 - How danger of deprivation of salary operates as, ii. 236.
- Punishment**—Equality of, as maintained in the French Declaration of Rights, considered, ii. 508.
- Declaration, that it cannot be inflicted except in virtue of a promulgated law, in the French Declaration of Rights, criticised, ii. 512-513.
 - Uses made of the division of good and evil into the first and second order, in reference to, iii. 289.
 - Divisibility as a quality of, iv. 31, 32.
 - How far the master of a penitentiary should have power of, iv. 53.
 - Effect which the arrangements as to prison discipline may have in increasing or decreasing, iv. 123.
 - for offences in prison—suggestions as to, iv. 164. The mutual responsibility system adoptable without hardship, ib.
 - Objects, or ends of, enumerated, to try if transportation meets them, iv. 174.
 - Frequently thoughtlessly administered—involves frequently more in reality than name—instance, transportation for a limited time, to a country whence the convict cannot return at its expiry, iv. 183-199.
 - Hard labour as a, first adopted in the United States, iv. 212-213.
 - Effect of, on trustworthiness of evidence, vi. 22, 268-270. *See* Sanction—Legal.
 - as a security for trustworthiness of testimony, vi. 284-285, 291-308. Distinctions of falsehood—blameless, blameable from temerity, and blameable from intention, 291-293. False incidence of punishment, on the false oath instead of the mendacity, 294-295. Rules—Temerity should be punished, 295-296; Amount of punishment for falsehood should be sufficient protection without aid of other sanctions, 296; Regard to be had to extent of the mischief done, 296-297; Litigants should be punished for false statements, 297-302. Defects of Roman law regarding punishment for falsehood, 302-303. Defects of English law, 303-308.
 - substituted for oath, to secure public funds from fraudulent claims, vi. 313.
 - Apprehension of—Effect produced by, vi. 6 n.
 - Evidence that may occasion, not on that ground to be excluded, vi. 96, 106-109; vii. 445-472. *See* Self-disserving.
 - Rigour of, increased, because operation of law defeated by quibbles on the ground of humanity, vii. 453.
 - Inaptitude of imprisonment for debt as, vi. 177.
 - according to English law, as a test of depravity, vii. 412-413.
 - Whether registration should be enforced by, vi. 84.

- Punishment—Exemption from, in cases of mendacity, promotes falsehood, vii. 262.
- Much of what seems done by fear of, done by fear of shame, vi. 326.
 - Effect of, on belief, vii. 108-110.
 - Proper principles of, in relation to the Constitutional Code, ix. 22-24. *See* Penal Law.
 - the counterpart of reward as an instrument of Government, ix. 47-48.
 - necessary for the production of responsibility, ix. 151-152.
 - to be economised in the Constitutional Code, ix. 150-151.
 - Origin of the vindictive principle in, x. 69-70.
 - Rationale of—Publication of, from the French, x. 548.
 - Afflictive, i. 413-420. *See* Afflictive.
 - by imprisonment, i. 420-431. *See* Imprisonment.
 - by Quasi-imprisonment, i. 431-435. *See* Banishment; Relegation.
 - Simply restrictive, i. 435-437.
 - Active or laborious, i. 437-441.
 - Capital, i. 441-450. *See* Death.
 - by forfeiture, i. 451-475. *See* Forfeiture.
 - Corporal—Absence of, a feature of the Chre-tomathic system of Education, viii. 15-16.
 - Derivative, or falling partly on the innocent—Rules concerning, i. 477-478.
 - on the Penitentiary Panopticon system, *See* Panopticon.
 - Remission of—Provisions for, by Constitutional Code, ix. 600-607.
 - by the transportation system—The evils of, exposed. *See* Transportation.
- Punishment-Book—Plan of, for entering punishments and acts of coercion in the army or navy, ix. 367-368.
- Punishment-minimizing principle—in the management of the Chrestomathic School, viii. 48.
- Punishments—Proportion between, and offences, i. 86-91. Four subordinate objects for legislator to keep in view, 86. Thirteen rules for making the estimate, 87-90. Recapitulation of circumstances to be kept in view, 90-91.
- Classification of, i. 395-396. Corresponds with that of offences, ib.
 - and crimes—Analogy between, i. 407-409.
 - Corporal, examined at length, i. 413-450. *See* Corporal.
 - Sanguinary—Effects of, i. 442-444.
 - Vicarious—their nature and unequal operation, i. 479-480.
 - Transitive, as corruption of blood, &c., and their disadvantages, i. 481-483.
 - Complex, examined, i. 490-516. General inconveniences, 490. Transportation,
- 490-498. Panopticon Penitentiary, 498-503. Felony, 503-511. Præmunire, 511-512. Outlawry, 512-514. Excommunication, 514-516.
- Punishments—Choice of, and latitude to be given to judges in, i. 516-517.
- Privative, or Forfeitures, i. 451-475. *See* Forfeitures.
 - Collective, viz. inflicted on large bodies of men for delinquencies of part of them, examined, i. 483-484.
 - Subsidiary, examined, i. 517-519. Necessary for enforcement of, or substitution to primary, 517. Imprisonment, 518. Estimate of income to make it subsidiary to pecuniary punishment, 518-519.
 - How to strengthen the impression of, upon the imagination, i. 549-550.
 - The limitation of, in the French Declaration of Rights, criticised, ii. 511-512.
 - the counterpart of Rights, iii. 160-161.
 - intended to rise above each other should have a common measure, to prevent their being diversely estimated, iv. 29-30.
- Punitive remedy—Evil of following, in different tribunals from those which award the satisfactive, v. 531-532.
- Punitory law—what? i. 151.
- Pupilage—Inquiry as to the proper period of, i. 348.
- Purchase and sale of offices considered, ii. 246-248.
- Purchasers—Use of a system of registration to, vi. 575.
- Purely-metrical-translation exercise, in schools—Uses of, viii. 46.
- Purgation in connexion with benefit of clergy, i. 506-507.
- Purgatory defined, i. 485.
- Purity in the measurement of Pleasure and Pain, i. 16.
- Physical and moral—Connexion between, iv. 158.
 - of language—an expression used to prevent its improvement, iii. 273-274.
 - of style essential in the composition of laws, iii. 206-207.
 - of motive—a boast had recourse to, when misgovernment attacked, ix. 60-61.
- Purport—depends upon tenor, vi. 290.
- of words—Precariousness of testimony to, vii. 136.
- Pursuer—Demand Paper by, ii. 65-73.
- Nature and contents of Demand Paper by, ii. 66-70.
 - Amendment of demand of, ii. 72-73.
 - more likely to be in the right than defender, ii. 32.
 - Commencement of suit by personal application of, ii. 62-63.
 - Security to defendant against oppression by a, ii. 105-110. *See* Counter-security.
- Pursuers General—Arrangements as to, in the plan of Judicial Establishments

- drawn up for France, iv. 354-358. Appointment, continuance, power, and rank, 354. Pay, 354-355. Attendance, 356. Oath of office, 356-357. Deputes, 357-358. Responsibility, 358.
- Pursuers General—Functions of, iv. 384-385. To act for the public, the monarch, and the indigent, ib. Oath of office, 385.
- Their line of duty, promotion, &c., to be kept distinct from that of the judge, iv. 387-389.
- Pursuer—Public. Demand Paper at instance of, ii. 68-70.
- —, *See* Advocates—Government.
- Push-pin—Comparison taken from the amusement of, ii. 253.
- Pussort—Debate by, on limitation of testimony, vii. 537 n.
- Puttenham—General, noticed, ix. 361-362 n.
- Pye—H. J. (Poet Laureate)—Letter to, x. 361.
- — noticed, xi. 118.

Q

- Quack medicines—Nature of the tax on, ii. 575 n.
- Quakers—Founders of the most successful colonies, i. 497.
- Penitentiary system of, at Pennsylvania, i. 502.
- Characteristics of the, iv. 213.
- Impunity for crimes witnessed by, v. 201-202; vi. 316; vii. 425. The law altered, v. 202 n; vi. 381 note 6.
- Occasional remarks on oaths in relation to, v. 456, 461, 513.
- untenability of their objections to war, x. 581.
- Qualification—The Property, for members of Parliament, criticised, ii. 249; iii. 484.
- of jurymen, ii. 127-129.
- as a limitation on the disposal of offices, ii. 248-249.
- The knowledge, for the exercise of the suffrage, suggested, iii. 464-465, 470, 560, 565.
- Qualification-Judiciary, for trying the qualifications of candidates for office, by the Constitutional Code, ix. 274-277.
- Qualifications of Electors—Provision for, in Radical Reform Bill, iii. 564-566.
- at Elections—Mode of certifying and registering by Radical Reform Bill, iii. 575-577.
- of Representatives—Provision for, in Radical Reform Bill, iii. 566-567, 567-568 n.
- of candidates for office—Arrangements as to, in Constitutional Code, ix. 271-283. *See* Ministers collectively.
- Qualified list—Selection of Jurors from, as described in the "Art of Packing," v. 78, 83 n, 122 n.
- Quality—a physical fictitious entity, viii. 199, 264, 331.
- as an absolute fictitious entity of the second order, viii. 202-203.
- considered as one of the predicaments, viii. 235.
- A predicate is the assertion of, viii. 335.
- Mental operations performed in the attribution of, to a subject, viii. 337.
- of witness—Effect of, on probative force, vi. 221.
- and quantity—Standards of, as preappointed circumstantial evidence, vi. 583.
- Qualities—Primary, of evidence—correctness and completeness, vi. 21.
- desirable in evidence, vi. 21-22, 211. *See* Trustworthiness.
- considered as fictitious entities of the second remove, viii. 197.
- Quantity—a physical fictitious entity, viii. 199, 263-264.
- considered as an absolute fictitious entity of the first order, viii. 201-202. Distinguished into continuous and discrete, ib.
- considered as one of the predicaments, viii. 235.
- Sciences involving the predicament of, viii. 287-288.
- Utility of establishing standards of, i. 555.
- Quantities—Negative. Obscurities, in regard to the multiplication of, removed, viii. 178.
- Quarantine—arrangements for mitigating the evils of, iv. 119 n.
- Quarrels. Judicial adjustment of, recommended, ii. 46-47.
- Quartering of soldiers—The principle of, ix. 386.
- Quarterly Review—Statement in, that Bentham was a disappointed man, commented on, x. 541-542.
- Quasi-appeal in the Principles of Judicial Procedure, ii. 161-169;—
- — and appeal, how distinguished, ii. 161-162. Latter, where the judge fails in the services required by appellant, ib. Circumstances in which applicable, 162.
- — Grounds for, ii. 162-164. Denial of means of proof, execution, communication, or defence, 163. Delay and precipitation, ib. Remedies to these, 163-164. Falsification of Record, 164.
- — Proceedings in, ii. 166-167.
- — Checks in relation to, ii. 167-168.
- — Options which the Judge Appellate has in, in relation to his opinion of the decision pronounced, and of the conduct of the immediate judge, ii. 168.
- — Arrangements in connexion with, for the employment of evidence found after the decree of the Primary Court, ii. 160-169.

- Quasi-appeal**—Security in case of, against irreparable punishment, ii. 169.
- Quasi-delict.** Doctrine of the civilians as to, ii. 70.
- Quasi-imprisonment as a punishment,** i. 431-435.
- Quasi-Jury**—in *Principles of Judicial Procedure*, ii. 141-158;—
- — Preparatory observations on, ii. 141-143. Not to have authoritative power, but merely to be a check on the judge by stating opinion, 141. Increases responsibility where it should lie—on judge *ib.* Adjustment of number to the expense and distance, 142. Payment by public, and not varying with income of jurymen, 142-143.
 - — Use and definition of, ii. 143-144. To give the advantages of the jury without the mischiefs from mistakes, &c., 143. To have all the powers of a judge except the imperative, 144.
 - — Whence and how chosen, ii. 144. No qualification but knowledge, *ib.* Chosen by chance, *ib.* Secrecy of vote, *ib.*
 - — Expunction, or challenging, not to take place as to, ii. 144-145.
 - — Uses of, ii. 145-148. Acts as a security for moral aptitude of judge, 145. Compared with ordinary jury, which professes to be security for his intellectual aptitude, *ib.* The control to be effectual, must attend every step of the case, 145-146. No inducement to corrupt such a body, 146-147. Among the advantages of Jury, Civil and Penal, are publicity—the giving reasons—the receiving evidence in its best form, 147-148. These realized by quasi-jury, *ib.* Acts as a school of judicature, 148.
 - — Difference between, and jury, ii. 149. Found in the quasi-jury having no absolute judicial functions, except prohibition of appeals in criminal cases, *ib.*
 - — Collateral advantages, or beneficial applicabilities of, ii. 149-151. Application as a school of justice—advantages over jury, from greater ramification, 149-150. Universality of its application to free and despotic countries, 150-151.
 - — Jurisdiction of, ii. 151-153. In all causes in which Judges have jurisdiction, 151-152. Power of assessing to be in each suit, coextensive with that of Judge in deciding, 152-153. Excluded in summary suits, 153.
 - — Interrogative functions of, ii. 153-154. Parties, witnesses, counsel, judge, &c., *ib.* Obligation to answer where it is apt and relevant, 154.
 - — Opivative function of, ii. 154-155. Manner in which to be expressed, and effect to be given to, *ib.* Entry in Register, *ib.*
- Quasi-Jury**—Warrant of, for appeal, ii. 155, 156. In common crimes, appeal only to be admitted in case of certificate of doubt, or belief of innocence, *ib.*
- — Costs of trial by—how arranged, ii. 156-157.
 - — Features in Jury-trial discarded by the system of, ii. 157-158. Number only three, 157. No enclosure except by consent, *ib.* No oath, *ib.* No forced unanimity, *ib.* No torture, 158. Responsibility to Public-opinion Tribunal; &c., *ib.*
 - — Recapitulatory Examination before, ii. 158-161.
 - — Provisions as to, in Constitutional Code, ix. 554-568;—
 - — General preliminary observations, ix. 554-556. Narrower in effective force than the English Jury system, but with a wider extent over the field of legislation, 554. Ordinary Jury system only good as counteracting a bad rule of action, *ib.* The apt features of the Jury system retained in this—limits to judicial power, publicity, obligations on judge to give reasons, and production of evidence in its best shape, 554-555. Causes of unaptness not to be found in this system—corrupt appointment, infraction of oath, power in the hands of incompetent men, want of responsibility to public opinion, and vexation and expense to the parties concerned, 555. The service of juries in counteracting the law, noxious where the laws are good, 555-556. Division of the Quasi-Jury into two branches—the erudite and the popular, 556. Enumeration of the arrangements tending to fix, clarify, and give effect to their proceedings, *ib.*
 - — Fields of service, ix. 556-558. A body of assessors attending every court, 556. Duties, principal and incidental, *ib.* Original inquiry by the judge, 556-557. Recapitulatory examination before Quasi-Jury, 557. No new evidence, unless newly discovered or come to hand, *ib.* Incidental reference, where complaint of judge's conduct in the cause—as to delay, &c., 557-558. Uses of Quasi-Jury—check on judge, instruction to jurors, 558.
 - — Composition and number, ix. 559-561. Ordinary and select, 559. Always an odd number, *ib.* Moral aptitude looked for in the ordinaries whose interest coincides with that of the greatest number—intellectual in the extraordinaries, *ib.* Considerations as to the most simple method of narrowing the list, 559-560. A Quasi-Jury compositor for extracting the eventually attending, from the possibly attending list, *ib.* The whole body of electors the mass from whom the selection made, by lot, 560. Security

- against the abject classes, in the requisition of capacity to read, 560-561.
- Quasi-Jury**—Functions of, ix. 561-563. The auditive, 561. Lective, as to writings, &c., ib. Inspective, ib. Orally interrogative, ib. Commentative—privilege of making remarks, ib. Opinative, in the way of amendment on the judge's decree, ib. Appeal licencing—suggestion for allowing the Quasi-Jury the right to interdict or allow execution, notwithstanding appeal, in criminal cases, 561-562. The class of offences to which their power of allowing execution referable—those occasioned by indigent rapacity, theft, robbery, &c., 562. Circumstance affecting the safety of the public, which may justify such restrictions on appeal, ib. Mode in which this function put in execution, 562-563.
- — How located, ix. 563-567. Three always in attendance, one a select, the other two ordinaries, 563. Method of supplying defaults, ib. List of liable set, ib. Destined-attendance set, ib. Quasi-Jury minister—to choose the liable lists for the year, ib. Excluded list—grounds, Disreputableness—Preoccupation, &c., ib. Exempted List—grounds, Infirmary, Superannuation, Private Professional occupation, Poverty, &c., 563-564. Method of claiming exemption, ib. Country and Town liable list, 564. Each divided into select and ordinary, ib. Admittance to select on application, which disqualifies for receiving subsistence-money, ib. Destined attendance sets, framed by Registrar, ib. Notice to those called, 565. Choice by lot of the several sets, ib. Transmission of excuses and framing of excuse list, ib. Efflux and Influx list—of persons ceasing to become, and persons commencing to become liable, 565-566. Adaptation of the sets to the number of Trials, 566. Privilege of rotation, ib. Substitutes, ib. Protection against packing, by the operation of the Public-opinion Tribunal, ib. Expediency of confining the selection to towns in new and thinly-peopled countries, ib. Suggestions for extending the privilege to females, 566-567.
- — Subsistence-money to, ix. 567. Double the estimated day's pay of lowest paid labourers, ib.
- — Attendance of, ix. 567-568. Defaulters' lists, 567. Penalty comes within the Penal Code, 567-568.
- — Securities for appropriate aptitude of, ix. 568. Not punishable for unconscious error, but punishable for palpably designed error, ib. Punishable for corruption, ib. Judge to prevent them from obstructing proceedings, ib.
- Quasi-Jury-Inquiry**, as a stage in suits, ii. 92-94.
- Quasi-licitor**—as a judiciary officer in the Constitutional Code, ix. 466.
- Quasi-suits**, or incompletely organised—distinguished as a species, ii. 88.
- Quasi-trial**, or recapitulatory examination at instance of party or judge, ii. 158-161.
- Quebec Act**—The limitation on the power of the Crown to legislate for colonies acknowledged by, iv. 258-259.
- Queens of England**—Characters of the, ix. 108-109.
- Queen's Bench**. *See* King's Bench.
- Queen's College, Oxford**—Bentham entered as a Commoner of, x. 35-36.
- Question**—Begging the, by means of using expressions, conveying praise or dispraise, ii. 436-438.
- and answer—Outline of Parliamentary Reform in the form of, iii. 539-552.
- Questions to witnesses**, vi. 384-385. Should be one by one, and not in strings, 384. Should arise out of the answers, 384-385.
- in epistolary interrogation should be numbered, vi. 441-443.
- Questioning**. *See* Interrogation.
- Quibbles and quirks**—Evasions of justice from, vi. 148; vii. 257, 453-454.
- — Power of judge to give or refuse effect to, and its influence in making the law arbitrary, vii. 308.
- Quietist**—The argument of the, for no alteration, ii. 430-431.
- Quintilian**—Character of the critical labours of, ii. 380.
- Quo warranto**—The cases of, under Charles II., alluded to, i. 483.
- Quorum**—The requisition of, in a legislative assembly, ii. 326.

R

- Race or Lineage**, as a circumstance influencing sensibility, i. 30.
- Radical branches of the Defensive Force** defined, ix. 333-336. In the army all persons capable of bearing arms—in the navy the merchant seamen, ib.
- — Particular institutions regarding, in the Constitutional Code, ix. 343-348. *See* Defensive Force.
- Radical Reform** urged in preference to moderate, in Reform Catechism and Introduction, iii. 435-557.
- — Author's opinions of, as compared with other systems, iii. 458.
- — Circumstances in which the interests both of Tories and Whigs would be affected by, iii. 528-529.
- — The ingredients of, iii. 558.
- — Causes of the feeling of the danger-

- ousness of, and of the vituperative expressions used against, iii. 601.
- Radical Reform**—Terms of attack on, in King's speeches, 1819, considered, iii. 602-603.
- — Bill for, with extracts from the reasons, iii. 558-597.
- — contradistinguished from Whig, in a letter to O'Connell, x. 598-599.
- Radicals**—the true friends of the people, iv. 424.
- Radicalism** not dangerous, iii. 599-622.
- Plan of defence of, iii. 604-605.
- The charge against, of intending a sponge on the National debt, rebutted, iii. 608-611.
- The charge against, of a projected division of property, refuted, iii. 605-608.
- Defence of, from the state of America, iii. 612-613.
- Defence of, in the history of the Volunteer Association of Ireland, iii. 613-620.
- Origin of the Association—characteristics of Radicalism in its constitution, 613-615.
- General sketch of the results, 615-616.
- Coincidences with Radicalism explained in respect to secrecy, universality, equality, and annuity, of suffrage, 616-617.
- Downfall of the institution when Reform moved—treachery of the leaders, 617-619.
- Consequences, 619-620.
- Growth of, evinced in the founding of the Westminster Review, x. 540-541.
- Rage**—Nature of, i. 53.
- Fury, &c., as designative of motives, i. 203.
- Railways**—Considerations as to the effects of, ii. 55.
- Advantages of, iii. 67.
- Raisin**—The Sultana, introduced in England by Bentham, x. 150, 156.
- Raleigh**—Sir Walter. The case of, an instance of suspended punishment, i. 509 n.
- — — noticed, i. 10 n.
- Rallis**—Eustratios, one of the Greek youths whom Bentham undertook to educate, iv. 588.
- Rammohun Roy**—Opinion of, x. 571.
- — Letter from Bentham to, on the state and improvement of British India, x. 589-592.
- — Account of, by Colonel Young, xi. 7-8.
- — Introduction of, to Bentham, and further account of in the letter of introduction, xi. 59-60.
- — desire to get him into Parliament, xi. 66.
- Ramsden**—Jesse, noticed, viii. 148 n.
- Ramus**—Peter, critical inquiry as to whether he was the author of the form of logical division called the Porphyrian Tree, viii. 103, 111-112 n.
- — — noticed, viii. 116.
- Ramus**—William, noticed, x. 28.
- Rancour**—Nature of, i. 53.
- Randolph**—David Meade—Letter to, from Governor Snyder, on Bentham's proposal to prepare a code for Pennsylvania, iv. 475-476.
- Random punishments**—Effect of, i. 485-489.
- Ranelagh's**—Similarity of the Panopticon to, in architecture, xi. 105.
- Rank**—Nature of, and legal constitution of, iii. 166.
- as an object of security by the law, iii. 213.
- Influence of, on sensibility, i. 29.
- Sensibility to punishments of the moral sanction as affected by, i. 457.
- Degradation from, as a punishment, i. 462-463.
- Conferring of, as a reward, considered, ii. 194.
- How far the support of, necessary to the public service, ii. 234-235, 245.
- The utterance of fallacies, costing no trouble, favourable to the support of, ii. 481.
- The proper allotment of, to judges, considered, iv. 378.
- Prejudices of—Influence on juries, and suggestions for obviating, v. 165-167.
- of a witness—effect of on testimony, vi. 254.
- increases a man's utility as a spectator in courts of justice, vi. 361.
- as an ingredient in evidence, vii. 61-62.
- The political influence of, examined, ix. 78-92. See Honour—Factitious.
- The worship of, examined and accounted for, ix. 82-85.
- of nations—an expression used when rank of their kings meant, iv. 427.
- Ranks**—Scale of. Remarks on the Empress Catherine's, ii. 191, 194.
- Rapacity** as a motive, i. 50.
- Dangerous nature of offences occasioned by, i. 75, 82.
- Rape**—Extent of the criminality of, i. 82.
- Nature of the offence of, i. 118-119.
- Analogical punishment suggested for, i. 411.
- Rapin's History**—an early favourite with Bentham, x. 7.
- Rashness** in an act—Nature of, i. 44.
- — — Punishment for, vi. 295-296.
- Ratiocination**—a faculty of the mind necessary to the teacher and the learner, viii. 76.
- Ratiocinative matter** of a code, and its foundation in the non-disappointment principle, v. 413-414.
- of the Constitutional Code—Nature of, ix. 3.
- Rationale**—The, or set of accompanying reasons as a component part of a code of laws, iv. 454.
- — — in a code of laws—The various capa-

cities in which it is of service, iv. 491-494, 526, 538-539. Serving as a guide and bridle to the draughtsman and the legislator; an instrument of interpretation and source of satisfaction and instruction to the citizen; a means of instruction and guidance, and source of satisfaction to the judge, ib.

Rationale—The, the term justified, vi. 5.

— — — Absence of, in the proposed Spanish Code, animadverted on, viii. 517-519.

— — — as part of a code of laws—Frederic the Great's objection to, criticised, iv. 526.

— — — First promulgation of, in the Constitutional Code—absence of, in the established systems, and the reasons, ix. 1-2.

— — — should indicate the conduciveness of the various articles to utility, iv. 540-543.

— — — The several parts of, should be as nearly as possible in contact with the articles of law to which they apply, iv. 543-545.

Rationale of Evidence, vols. vi. and vii.

— — — Editor of original edition of; Notes, &c., by—Preface, vi. 201-203. Note to new edition, vi. 203. Animadversions on Dumont's remarks on the author's scale of degrees of persuasion, vi. 234-235. Animadversions on views of Edinburgh Review, —viz., on making the communications between lawyer and client evidence, vii. 476-479; on taking the evidence of husbands and wives in regard to each other, 486; on interrogating parties, 487-488 n. Chapter by, on the rule that evidence is to be confined to the points in issue, vii. 558-562.

Rationale of Punishment, i. 388 *et seq.*

— — — Dumont's advertisement to, i. 388-390. His account of the MSS. and those of the Rationale of Reward, 388-389.

Rationale of Reward, ii. 192-266.

— — — Publication of, from the French, x. 548.

Ravallac—Illustration from his assassination of Henry IV. i. 62, 64, 74 n*, 473.

— — — an illustration of the effect of oaths, vi. 318.

Ravaut—Procédure Civile of, quoted, vi. 303.

Ray—John, the botanist—Notices of the family of, as connected with the Bentham family, x. 3, 25.

Raymond—Lord, Chief-Justice—his views of the obligatoriness of acts of Parliament, v. 126.

Rayneval—M., anecdotes and notices of, x. 125-126, 152.

Razumovsky—Count, in Russia—Story of a dinner party with, x. 160.

Reaction—the counterpart of passion, viii. 204-205.

Reactive source of motion, or motion from

the elasticity of springs—Applicability of, viii. 139-141.

Reading as a qualification for jurymen, ii. 127.

— as a qualification for the elective franchise, iii. 464-465, 470, 560-565.

— Public encouragement to, ii. 258.

— as a criterion for benefit of clergy in English practice, i. 506.

— Form for attesting a voter's qualification in, iii. 565.

Real entities—Logical uses of, distinguishing from fictitious, iii. 286.

— See Entities.

Real evidence, or evidence from things, as a branch of circumstantial, vii. 8-15;—No description of fact that may not be the subject of legal inquiry, 8. Extent of the field, even in penal law, 9. Table of facts as to the human body, which may come under the cognizance of legal tribunals, ib. Things, in the relation they bear to a fact of delinquency indicated, 10. Condition of things as source of evidence, distinguished into relative and absolute, ib. Immediate distinguished from reported, ib. Infirmative facts—illustrations, 11. The circumstantial evidence of possession of an article of criminative real evidence, 11-13. (See Possession.)

Interrogation as a means of supplying deficiencies, 14-15.

— — Forgery of, vii. 15-18. Compared to subornation—an attempt to make objects give a false tale, 15. Divided into fabricative and oblitative, ib. Joseph's cup in Benjamin's sack, an illustration, 16. Erroneous conclusions may be formed from—the alteration may be in self-defence against a false accusation, or it may have been done in sport, 16-17. Provision should be made for keeping real evidence *in statu*, 17. Defects of English law in this respect, 18.

— — Mode of dealing with, in case of litigants distant from each other, ii. 99-103.

— — Authentication with regard to, vi. 120; vii. 174-175.

— — The principle of preappointed evidence as exemplified in, vi. 582-585.

— — compared with personal, vi. 173-174, 218.

— — as distinguished from personal—unnoticed by Gilbert, vi. 183.

Real reported evidence. See Reported Real.

Real property commission—Authority conferred by, iii. 349-350 n.

Real property—Dilatoriness and other defects of the law of, iii. 420.

— — Progress of inquiry regarding the law of, posterior to the publication of the commentary on Humphrey's outline of a code, v. 388.

Real property—The removal of, from liability for simple contract debts, animadverted on, v. 533.

— Professional evidence that no title to, considered absolutely safe, v. 538.

— Commentary on Mr Humphrey's outline of a code of, v. 389-416. Remarkable as the production of an experienced practical man, 389. Heads of his reform, and probabilities in favour of adoption, 389-390.—1st Improvement, substitution of apt for unapt formula, 490-491; not to be accomplished without legislative sanction, though some improvements might be made by draughtsmen, ib. 2d, Registration. 3d, Abolition of the anomalous courses of descent, 391. 4th, Reduction of copyholds to the state of freeholds. 5th, Partition of common lands, ib. Remaining improvements embraced in codification, 391-392. Advantage of systematic abbreviation, 392. Advantage of schedules for describing the subjects, ib. Bewildering effect of confused sentences, with illustrations, 392-393. Common forms applicable to the like parts of dissimilar deeds, 393. Length of sentences, 393-394. Indication of the topics by headings, 394. Draft of a deed of sale, compared with the author's, 395. Impediments to forgery, by individualisation of time and place, 396. Sums to be both in words and figures, 396-397. Mischiefs of making use of words which are not self-explanatory, ib. Instructions for filling in seller's name, condition, and habitation, 397. Method of describing the subject-matter, ib. Directions for signing, and the description of the act, 398. Draught of a deed of mortgage, compared with the author's, (Humphrey's,) 398-399. Mortgage, an improper term—proposed substitution of land-pledge, 399. Considerations as to their being made negotiable documents, 400. Draughts of marriage contract compared, 400-402. Notes on author's draught, 402. On reviewer's draught, ib. Words, pin-money and jointure, 402, 403. The term rent-charge, 403. Precision in the employment of the word "inalienable," 403-404. The term impeachment for waste, 404. Dower, and the proper presence of legal provisions in connexion with stipulations, ib. Relation of succession of children to time of husband's decease, 405. Heirs—want of a common word to embrace all kinds of successors, ib. Distinctness in respect to naming places, &c. ib. Registration, 405-407. Uses—preservation from loss and falsification, exclusion of counterfeit, record of enumerances, statistical information, 405-406. Extract from constitutional code, 406-407.

Mode of executing the manifold system of writing; and use of distributing exemplars as protection from forgery and fraud, ib. The encouragement that would be given to honesty by greater security to lenders, 408. Notaries in France, and their system, ib. The plan of nullification on failure of compliance with registration, objected to, as punishing innocent party instead of culpable lawyer, 409-410. Considerations as to the unwillingness of borrowers to allow their position to be recorded, 410. A simple form of inquiry into the existing state of real property, substituted to Mr Humphrey's expensive and complicated plan, 410-411. Simpler arrangements for keeping up the system, 411-412. For this, as for other branches of a general code, the matter divisible into enactive, expositive, ratiocinative, instructional, and exemplificational, 412. The uses of the expositive, with examples of its application, 412-413. Ratiocinative matter, and the non-disappointment principle, 413-414. Method of subdivision by a plan susceptible of being carried to any length, 415. Use of a general list of the diversifications of family connexions for those making wills, ib. Provisions for preventing a reforming code from retroacting, 415-416.

Real property—Outline of a plan of a General Register of, communicated to the Real Property Commissioners, v. 417-435. See Register.

Real and Personal Property—Factitious nature of the distinction between, i. 508; vi. 543.

— — — — The distinction between, considered, in regard to authentication of wills, vi. 533, 542-551.

— — — — Abolition of the distinction between, provided for in Dispatch Court Bill, iii. 390.

Reason for an act—meaning of the term, iii. 215.

— A word not suitable to designate one of the mental faculties, as it is generally used to express approbation of the use made of faculties, viii. 76-77.

— Appeal to, instead of authority, ii. 391-393.

— Appeals to, for the correction of abuses, treated with contempt, ii. 457.

— thrown away on the insincere, iii. 600-601, 621-622.

— Law of, uses made of the term, i. 9 n.

— of a law—definition of a, i. 238 n^{bb}

Reasons—the Author's—form his sole reliance for the adoption of his opinions, iv. 420.

— The giving of, as affecting motives, i. 48.

— Judge should give, for decisions, ii. 29.

— Publicity has occasioned the giving of by judges for their decisions, vi. 357.

Reasons—Judge giving—an advantage produced by Jury Trial, ii. 147.

— Technical, characterized, vii. 400-401.

Reasons for laws—Promulgation of, i. 575-576.

— — — Promulgation of—Essay on the, i. 159-163.

— — — Embodiment of, iii. 323.

— — — Blackstone on, i. 234.

— — — Illustrations of method of stating, i. 465.

— — — Laws accompanied by, would remain unaltered on account of their merits, ii. 437.

— — — accompanying laws—Analogy for, in judges giving reasons with decisions, v. 418.

— — — to be kept separate from the laws themselves, ii. 356.

— — — Appendix a receptacle for, iii. 596.

Reasoning—Close, characteristic of those having the general interest at heart, as contrasted with vague generalities, ii. 455-456.

Rebellion—Associations not a cause of, i. 577.

— Application of forfeiture as a protection against, i. 481-482.

— Commission of—Nature of, iii. 350 n.

Recapitulation of instructions as to the probative force of evidence, vii. 597-598.

Recapitulatory examination, or Quasi-trial, in procedure, ii. 158-161. To be before a Quasi-jury, 158-159. No evidence but such as at original, 159. May be either at instance of judge or a party, ib. Applicable arrangements to the two cases, ib. Admission of undoubted facts under pain of penalties, 159-160. Two objects in view—additional instruction, and exposure of conduct of judge, 160. Checks on vexatious adoption of the recourse, ib. Appropriate evidence to be substituted to the indicative that may have come out at original investigation, ib. Grounds for refusal, 161. Proceedings of judge in recapitulating, &c., ib.

Recitation—Application of, as a means of promulgating ordinances in a partially civilized or a Mahomedan country, viii. 576-577.

Recitative exercises—Nature of, in the Chrestomathic system of Education, viii. 44.

Recognisances to keep the peace, i. 519-520.

Recognition of individuals—Facilities for, recommended as a precautionary police measure, i. 557.

— as a means of authentication of deeds, vi. 516.

— of a deed—all that is certified by attestation, vi. 517 n.

Recolement, vi. 451-458, 503. *See* Reëxamination.

Recollection—Erroneous, vi. 252. Distinguished from oblivion, ib.

— Refreshment of, vi. 253.

— Helps to, vi. 446-451. *See* Helps to Recollection.

— Writing as an aid to, vi. 328.

Recollectedness a security for evidence, vi. 283, 287-288.

Recompense to injured party as an element in the punishment of crimes, iv. 199-201.

Reconciliation—How judge to bring about, in case of quarrels, ii. 47.

— between parties—How far the prospect of obtaining, justifies judicial privacy, vi. 366.

Reconciliation courts of Denmark alluded to, ii. 47; iii. 83 n; vi. 24 n †, 326, 366 n.

Record—(Judicial)—Remedies for falsification of, ii. 164.

— Irrelevancy and uselessness of, in Technical procedure, ii. 176-177.

— should be a complete history, iv. 343 n †.

— Bandyng of, between Westminster Hall and the circuits, v. 475.

— Matters it consists of contrasted with those it ought to consist of, v. 530.

— Mixed meaning of the word, vi. 565.

— in a common-law suit, characterized, vi. 73.

— Animadversions on the conclusive nature of the evidence of, vii. 71-72.

— Gilbert's comparison of, to a diagram, vi. 144, 184, 565; vii. 71-72.

— amissing—admits evidence of a person convicted of perjury, vii. 409.

— Confessing to error in—Effect of, vii. 436-438.

— Withdrawing—Effect of, vii. 437-438.

— Proposed, of cases in which suspicious testimony received, vi. 119; vii. 161-162.

— *See* Official Evidence; Preappointed Evidence.

Records of Judicatories—Method of keeping, prescribed by the Constitutional Code, ix. 579-585. *See* Registrars.

Recordation of evidence, considered in the Rationale of Evidence, vi. 408-419. *See* Notation and Recordation.

— of evidence for eventual use—Absence of provisions for, in common law, shows want of codification, v. 499.

— by way of national book-keeping—Objections to the existing system of, v. 383-386.

— Uses of, with respect to law-suits, vi. 31.

— Extempore, as applicable to legally operative facts, vi. 79-83. Demand for, as a cure for oblivion and misrecording, 79-81. How supplied, 81. Precedents from English and French law, 82-83.

— derivative, and registration, vi. 83-86. Uses, viz., for contracts, &c., 83. To what instruments applicable, 83-84. How

- enforceable, 84. By whom performable, 84-85. Matter to be entered, 85. Securities against error, *ib.* Registrar's duty, 85-86.
- Recordation of the species and nature of the evidence received in causes, vii. 595-597.
- System of, attached to the Tribunals by the Constitutional Code, ix. 493-494.
- Recorder—Origin of the judicial office of, vi. 554 n.
- of London—His resistance to the enforcement of the act for the liberation of prisoners against whom no Bill is found, v. 179-180.
- Recorders—Temporary, how they might be obtained among various members of society, vi. 81-82.
- — Precedents from English and French law as to, vi. 82-83.
- Recoveries—Common—Described as a fiction of law, vii. 283-284.
- Recreations—Harmless. Utility of, ii. 254-255.
- Recruitment as a military term—Meaning of, ix. 349, 353.
- Source of, providable by a system of Pauper management, viii. 420-421.
- of the military forces—Arrangements for, in the Constitutional Code, ix. 396-397.
- Red Lion Street—the place of Bentham's birth, x. 5.
- Redemption of stock—Notice as to, and practice, with reference to the project of Annuity notes, iii. 114.
- Redesdale—J. F. Mitford, Lord, noticed, iii. 373 n; v. 116, 159, 371, 372; vi. 42 n.
- Redress—Legal. Benefit of, both to the injured and the aggressor in supplying the place of revenge, i. 542.
- Reduction of Offices. Principles on which it should proceed, ii. 251-252.
- Redundancy of words as a defect in laws, iii. 247-248.
- — — Rules for avoiding, in the phraseology of laws, iii. 260-264.
- — — Specimen of, in a British Statute, iii. 263.
- Reeligibility of representatives—Restrictions on, ix. 172-180. See Legislature.
- — — Discussion with Dr Bowring on, x. 528-530.
- Reeve—Edward—A Schoolfellow of Bentham, x. 14.
- Reeves, John—His testimony to the justice of Justice Ashhurst's opinion on the law, criticised, v. 237.
- Reexamination, repetition, or recolement, considered, in the Rationale of Evidence, vi. 451-458. Borrowed in Scotland from the Roman Law, 451-452. Systematic in Roman Law—incidental in English, 452. Apparent objects, *ib.* One only gained—assistance to correctness and completeness, *ib.* Objects better supplied by other provisions, *ib.* Admission of reexamination only on special cause, 453-454. Faculty of amendment in English equity practice, its uncertainty, with illustrations cited, 455-458.
- Referees—Provision for, in the Constitutional Code, ix. 552-553.
- Reference—Arrangement of Laws so as to provide means of, iii. 193-195.
- Liberty of, where weak evidence received, vii. 163.
- had recourse to when case deferred, vi. 104.
- Reform—how national prejudices, &c., to be dealt with in the case of, i. 180-184.
- Use made of the plea that there is difficulty in stopping in, i. 363.
- The practice of consulting those whose interest is opposed to, regarding, ii. 13.
- Employment of allusion to danger of innovation as an argument against, ii. 418-420.
- Difficulty of accomplishing, produces cry of danger of innovation, ii. 418.
- Fallacies on which the delay of, is supported, ii. 430-435.
- How met by expressions of Theoretical, Utopian, &c. ii. 457-462.
- Constitutional. Sketch of the various proposals for a, by Mr Meadly, iii. 553-557.
- How it is easily baffled by the delay occasioned by a second legislative chamber, iv. 423-424.
- Motives which cause the demand for its being gradual, iv. 423.
- The kind of, that will not be frustrated by sinister interest, illustrated in the new drop, v. 119.
- The Coronation Oath made an instrument of opposition to, v. 207-209.
- requires positive regulation (inferring inspection) while abuse does not, v. 208.
- Proposals for reducing the suffering created by, through the non-disappointment principle, v. 266-267.
- Includes the abolition of corruptive influence—Hence the opposition it meets, x. 81.
- Constitutional—Guardians of—Bentham urged to be one of the committee of, x. 522-523.
- Reform—Law. See Law Reform.
- Reform—Parliamentary—Plan of, in the form of a catechism, iii. 433-457.
- — Introduction to Plan of, iii. 435-556.
- — Authorities in favour of, iii. 442-443.
- — Democratic ascendancy as essential to, iii. 445-451, 613-620.
- — Elements of, iii. 452-458. Virtual universality and equality of suffrage, 452-453. Freedom of suffrage, including secrecy, 453-454. Due dependence of representatives as regards electors—independence as regards others, 454-456.

- Exclusion of placemen, 454-455. Universal constancy of attendance, 457-458.
- Reform—Parliamentary—Author's opinions on, as compared with those of other radical reformers, iii. 458.
- Usefulness—not dangerousness of, that creates hostility, iii. 466.
 - Inadequacy of moderate, iii. 516-521. Examination of the projects that had been brought forward, 516-518. Inadequacy with regard to electors, in respect of secrecy and freedom of election, virtual universality, and equality, 518-519. Inadequacy with regard to the representative body—Independence, constancy of attendance, and impermanence, 519-520. Household suffrage, 521. Plan for modification of expense, delay, vexation, and disorder, *ib.*
 - Circumstances in which the interests, both of Whigs and Tories, opposed to, iii. 527-532.
 - Interests of the country gentlemen, as opposed to, *ii.* 532-533.
 - Options and compromises which the author would accept as to, iii. 533.
 - Uses of the author's exposure of the motives and influences opposed to, *iii.* 533-535.
 - Ends to be aimed at on the occasion of, and means conducive towards them, *iii.* 539-541.
 - Means of, conducive to the aptitude of members, *iii.* 541-548.
 - Collateral advantages of the various departments of, to various classes of persons, *iii.* 548-552.
 - Enmity of the Irish aristocracy to, shown in the breaking up of the Volunteer Association, *iii.* 618-620.
 - Gerard Hamilton's opposition to, *ii.* 384-385.
 - Temperate and intemperate—a distinction used for fallacious purposes, *ii.* 452-453.
 - Discussion in Parliament on Bentham's Plans of, and misstatements corrected, *iv.* 566-569.
 - Correspondence with Sir Francis Burdett about drawing a Bill for, *x.* 491-495.
 - Radical and Whig—Letter to O'Connell on the comparative merits of, *x.* 598-599.
 - Radical, urged, in opposition to the proposals of Brougham, *ii.* 458.
 - Belief in the inadequacy of, while the Royal authority and the House of Lords remain, *ix.* 144-145.
 - Resolutions on, prepared by Bentham, and moved by Sir Francis Burdett, *x.* 495-497.
 - Applications for permission to print popular versions of author's Plan of, *x.* 489-490.
- Reform Bill—Radical, with extracts from the reasons, *iii.* 558-597.
- Titles of the, *iii.* 563.
 - Preamble of the, *iii.* 563.
 - Provision in, for seats and districts, *iii.* 563-564.
 - Provision in, for electors—Their qualifications and certificates, *iii.* 564-566.
 - Provision in, for qualifications of candidates, *iii.* 566-567.
 - Provision in, for election offices, national and district, and Election-Master-General, with subordinates, *iii.* 567-570.
 - Election apparatus of, *iii.* 571-574.
 - Recommendation of candidates—Forms for, in, *iii.* 574-575.
 - Method of establishing and recording qualifications in, *iii.* 575-577.
 - Method of election in—Ballot, &c., *iii.* 577-579.
 - Demarcation of election and Polling districts in, *iii.* 579-583.
 - Method of defining and indicating voters' habitations in, *iii.* 583-588.
 - Continuance of members by—annual Parliaments, *iii.* 588-589.
 - Vacancies in representation—How created and filled up by, *iii.* 589-591.
 - Means in, for securing Legislative Assembly against temporary disturbances, *iii.* 591-592.
 - Method of obviating indisposition of speakers in, *iii.* 592.
 - Appendix to—Necessity of definitions, abbreviations, &c., *iii.* 592-597.
 - Recapitulation of the leading principles of, and reasons for holding them, *iii.* 599-601.
- Reform of public offices—Principles on which it should proceed, *ii.* 251-252.
- Reform—Scotch—(viz., in relation to the judicatures) in Letters to Lord Granville, *v.* 3-53.
- Reformation—Kind of punishment that operates to, *i.* 71 n *.
- Punishment should be subservient to, *i.* 93.
 - equivalent in the moral world, to discovery in the physical, *i.* 227.
 - In what circumstances it is an object in punishment † *i.* 392.
 - Subserviency to, as a property of punishment, *i.* 404.
 - Subserviency of laborious punishments to, *i.* 440.
 - Unconduciveness of transportation as a punishment to, *i.* 492-495.
 - Conduciveness of the Panopticon to, by labour, temperance, separation, and instruction, *i.* 499-500; *iv.* 40, 47.
 - Inadequacy of the penal colony system

- to the production of, contrasted with the efficacy of the Panopticon Penitentiary Plan, with illustrations, iv. 174-183. *See* Transportation.
- Reformation—The, an innovation, ii. 418.
- — How it might have been stopped by a coronation oath, ii. 409.
- — Money and influence it threw into the hands of the king, and their effects on the liberty of the country, iii. 514.
- Reformers. How, if successful in pointing out abuses, they come under the libel law, v. 106-107.
- *See* Reform—Parliamentary.
- Regenfeld—Baron, noticed, x. 285.
- Register—General, of real property—Outline of a plan of a, communicated to the Real Property Commissioners, v. 417-435. Novelty a requisite, 417. Utility of reasons, and absence of them in Commissioners' Report, 418. Inadequacy of a preamble to a bill, 418-419. Two principles—Greatest happiness, and Non-disappointment, 419. Ends to be held in view, primary and secondary—former, avoidance of loss; latter, avoidance of delay, vexation, and expense, 420. Severe case of loss, or disappointment by defect of title, to be obviated, 420-421. Nature of a Registration Institution, and its drawback—expense, 421. Objects for attainment enumerated, 421-422. 1st—minimization of expense, 422. By Central Buildings, 422-423; By the smallest adequate number of functionaries, 423. Application of the principle of competition, 423-424. Gratuitous services of Probationary Deputies, 424. 2d object—minimization of delay, ib. Effected by strictness of attendance, &c., 424-425. 3d object—maximization of personal aptitude, 425-427. Deputeship, inaugural declaration, interdiction of emolument by fees, single-seatedness, public opinion, dependence of attendance on emolument, dislocability, 425-426. Reasons for not having patronage and power of removal in the same hands, 426. Inadequacy of restricting the choice to barristers, and of oaths for the security of aptitude, 426-427. 4th object—maximizing aptitude of machinery, 427-428. Power of sublegislation as to interior arrangements by the Central authority, ib. 5th object—security for the efficiency of the process maximized, 428-429. A comprehensive map, 428. Difficulties in the spherical form of the earth, and the inequalities of surface, ib. Method of subdivision to make a general map accord with the several minuter maps, 428-429. Utility of transverse lines illustrated in a map of Paris, 429-430. 6th object—extent of application of this security maximized, 430-435. All kinds of Property admitted, 430. No fees—the registration, while useful to individuals, being a national benefit, as a storehouse of evidence, and fees always creating corruption, 431-432. The manifold system of writing, 432-435. Illustrations of its utility, in the inadequate plans proposed by other means for obtaining accurate copies of deeds for deposit, &c., ib. 7th object—minimization of the burden, 435. In addition to the absence of fees, &c., conveyance of documents by post, ib.
- Register—General, of Real property—Correspondence with Speaker Abbot on the advantages of, x. 350-351.
- — — Cromwell's attempts to establish—how baffled, iv. 501.
- Register of criminals—Uses of, to the ends of justice, viii. 505.
- Register of all persons subjected to coercion and confinement, i. 370.
- Register—Military—Arrangements for a, in the army and navy, for entering punishments and complaints, ix. 367-370.
- Register of births, marriages, and deaths, i. 553; iii. 83; vi. 566-574.
- — — System of, in England, vi. 567 n; ix. 625-626 n. Bill for Scotland, ib.
- — — *See* Genealogical facts: Registrars—Local.
- Register of seamen—Advantage of, both to the public and to the seamen, ix. 406.
- — Plan for establishing and employing, with heads of entry, &c., ix. 409-415. *See* Defensive Force—Shipboard oppression obviated.
- Registers for workmen—Utility of a system of, viii. 398.
- Registrar of a judicatory—The position and functions of, described, ix. 465.
- A, should be attached to every directive official department, ix. 231.
- Registrar and his deputies, in Dispatch Court—Account of provisions for, in proposed Bill, iii. 309-310.
- — — Provision for appointment, function, salary, &c., iii. 341-342, 344.
- Registrars attached to the Judicatories—The qualifications required of, in the Constitutional Code, ix. 528-529.
- Registrars—Judiciary—Immediate and appellate—Provisions for, in Constitutional Code, ix. 579-585;—
- — — — Fields of service—Co-extensive with judge's, ix. 579.
- — — — Relation of, to judge, ix. 579-580. Verity, correctness, clearness, &c., of proceedings, what he has to see to, 579. Must make entry of whatever the judge requires, ib. Judge cannot expunge what Registrar has written, 580. Substitute appointed by judge in absence, ib.
- — — — Effective functions of, ix. 580-

581. Litiscontestational, in relation to a suit begun, 580. Providentiary by construction of preappointed evidence—for preventing rights from being frustrated, &c., *ib.* Transferred from local registers to the Judiciary Register, *ib.* Financial functions—as to the money for paying the officials, 580-581.

Registrars—Judiciary—Immediate and appellate—Elementary functions, *ix.* 581-582. Necessary to the discharge of his effective, 581. Included in the Litiscontestational and Auditive are—The Inspective, *Interrogative*, *Minutative*, *Commentative*, *Attestative*, *Receptive*, *Accersive*, *Communicational*, *Authenticative*, *Custoditive*, *Sub-directive*, *Access-affording*, *ib.* Included in the Providentiary-effective are—The *Receptive*, *Acceptional*, *Custoditive*, and *Requisitive*, *ib.* Included in the Financial are—The *Receptive*, *Acceptional*, *Custoditive*, *Requisitive*, and *Transmissive*, 581-582.

— — — Minutation by—how, *ix.* 582-583. Statements of discourses, and relatively influential occurrences, 582. What included in the term, *ib.* Subjects of concomitantly-statistic, and of subse-quentially-statistic information, *ib.* Documents, *ib.* Suits that may be unminuted on account of simplicity, 582-583.

— — — Attestation by—how, *ix.* 583. Applicable to any statements in the course of business, of which it is necessary to keep a probative copy, *ib.* Proceedings in the several cases of the person admitting, refusing, or evading the admission of the correctness and completeness of the draft, *ib.* Function of the judge as to authentication, &c., *ib.*

— — — Minutation-Amendment by—how, *ix.* 583-584. Case where a person desires to make addition, subtraction, or substitution on his attested document, *ib.* Exemplars to be kept in original state, 584. Method of making, *ib.* Arrangements as to the incidence of the expense, *ib.*

— — — Securities for appropriate aptitude applicable to, *ix.* 584-585. Method of making corrections, so that what was originally written be visible—no erasures or deletions, 584-585. Provision for treating suggestions by parties, &c., 585. Judge and Registrar to be mutual checks on each other, *ib.*

— — — No migration in the case of, as in that of the judges, necessary or beneficial, *ix.* 585.

Registrars—Local. Provisions regarding, in the Constitutional Code, *ix.* 628-636.

— — — Fields of service, *ix.* 625-626. Same as those of the Headman, 625. Provision of preappointed evidence, 626.

— — — Self-suppletive function of, *ix.* 626.

Registrars—Local. Functions in general, *ix.* 626-627. Reference to provisions as to Judiciary Registrars and Local Headmen, 626. Description of persons—sex, name, age, occupation, *ib.* Places and times, *ib.* Examples of the various sorts—deaths, births, marriages, and contracts, and other legally operative facts, *ib.* The Books, 626-627.

— — — Genealogical-recording functions, *ix.* 627. Deaths, marriages, divorces, arrivals at full age, lapses into insanity, and restorations to sanity, *ib.* Property-settling purposes, *ib.* Health-preserving sanatory purposes, *ib.* Private economy-aiding purposes—rates of mortality for insurances, &c. *ib.* Political economy-serving purposes, *ib.* Calamity and casualty-minimizing purposes—directing the attention of Government to the means of prevention, *ib.* Crime-minimizing purposes, *ib.* Indeterminate purposes—comparative salubrity of places and occupations, influence of temptations to prodigality, prevalence of intemperance, &c. *ib.*

— — — Death-recording function, *ix.* 628-629. Entry, in case of death, of person, place, time, cause, with description of persons present, 628. Digested mortality tables, and the disposal of them, *ib.* Power to extract information, *ib.* Information to Judiciary on suspicion of violence, *ib.* Prehension of suspected persons, *ib.* Temporary custody of found bodies, *ib.* Disposal to medical practitioner, when no claimant, 628-629. Examination of arrested person, 629. Functions of the English Coroner, *ib.*

— — — Marriage-recording function, *ix.* 629-630. To include divorces, 629. Causes of complication, as compared with other registers, *ib.* System in England, 629-630, and *n.*

— — — Birth-recording function, *ix.* 630. Sex, father's name, age, and occupation, mother's name, place, date, persons present, persons bringing report, date of report, child's name, if reported, *ib.* Considerations as to illegitimates, *ib.* English practice, *ib.* and *n.* †

— — — Maturity-recording function, *ix.* 630. Elicitation of evidence of the fact, *ib.* Legal rights to which it is serviceable, *ib.*

— — — Insanity-recording function, *ix.* 630-632. Entry, an adequate evidence, 630. Different kinds of insanity, and their different effects—with the view to the exercise of precautionary functions, 631. Provision for temporary confinement, *ib.* Provision when pecuniary means deficient, *ib.* Considerations as to prodigal persons, 631-632. English sys-

- tein, 632. Disposal of exemplars of record, *ib.* Registration of restoration to sanity, *ib.*
- Registrars**—Local—Post-obit-administration-granting function, ix. 632-633. Receipt of application from claimant of the administration, 632. Inquiry, *ib.* Temporary preservation of effects, *ib.* Practice in England, expense, and denial to those who cannot afford it, 633. Contrast with proposed plan, *ib.*
- — Property-transfer-recording function, ix. 633-634. Entry of all instruments appointed by the Legislature, 633. Advantages in the way of security from loss, fraud, &c., 633-634.
- — Contract-recording function, ix. 634. All contracts legislatively appointed to be registered, *ib.* Uses, *ib.*
- — Extra-judicial-evidence-recording function, ix. 634. All such evidence as may be legislatively ordained to be registered, in contemplation of litigation, *ib.*
- — Sub-judiciary topographic-evidence-recording function, ix. 635. Maps, and other imitative documents, *ib.*
- — Digestive function, ix. 635. Preparation of digested tables, and transmission of exemplars, *ib.*
- — Document chamber for public inspection of tables, ix. 635.
- — Term of service, ix. 635. *See Registrar—Judiciary.*
- — Attendance and remuneration of, connected with, and made dependent on, each other, ix. 635-636.
- — Who locable, and how located, and dislocated or removed, ix. 636.
- — Securities for appropriate aptitude, ix. 636.
- — Inaugural declaration, ix. 636.
- — Relation of, to Local Headmen by Constitutional Code, ix. 624-625.
- Registrars**—Local Headmen's—General description of, in Constitutional Code, ix. 467.
- Registration**—A system of, with regard to Titles, proposed, with the requisites, i. 552.
- of Deeds—The uses of, enumerated, v. 405-406.
- of Burdens on landed property—considerations on the unwillingness of borrowers to allow, v. 410.
- Application of, in schools, to all matters indicative of the state of discipline and scholarship, viii. 49.
- a system of, for the Prime Minister's Office in the Constitutional Code, ix. 209.
- system of, adapted in the Constitutional code to the operations in all the Official Departments, ix. 232-253. *See Books.*
- of Births, Marriages, and Deaths. *See Genealogical facts; Register; Registrars—Local.*

- Registration**—The effect of nullifying deeds in case of non-compliance with provisions for, considered, v. 409-410.
- of Laws—Prejudice in France in favour of, as a formality, iv. 311.
- of testimony, vi. 408-419. *See Notation.*
- judicial—System of proposed, vi. 330. Subjects of, *ib.* Uses of—as a check on the judge—with a view to appeals and future litigation, &c. *ib.* *See Official Evidence.*
- transcriptitious, as applied to contracts, vi. 575-582. Uses—preservation and promulgation, 575. Securities, debts, sale, *ib.* Leases, 575-576. What contracts to be registrable, 576. Whether in whole or part—expense apart, the whole, *ib.* Mode of enforcement—difficulties where there is no professional person, but all such personally liable, 577-578. Mode of notification—letter of advice, 579. Mode of designation in the case of land, *ib.* Limits to the application of the practice—extent to which secrecy compatible, 580-581. Importance of reducing the matter to be transcribed—aberrations of English practice, 581-582.
- publicity a security for correctness of, vi. 355.
- of facts connected with character evidence, vii. 59-60.
- of marks of manufacturers, &c., for prevention of forgery, iii. 72; vi. 584-585. Illustration from fabrics' copyright act, 584 n.
- of the species and nature of the evidence received in causes, vii. 595-597.
- *See Preappointed Evidence; Record; Recordation.*
- Registrum Brevium** referred to, vii. 458-459.
- Regret**—the pains of, i. 19.
- Regular procedure**—prejudices in favour of the term, vii. 198-199.
- Regulations**—Table of, in Legislative Assemblies, recommended, ii. 320.
- precautionary, in the admission of casually-written evidence, vii. 125-126.
- Precautionary for the weighing of evidence. *See Instructions.*
- Rehearing**—Nature of a, ii. 153.
- Reid**—Dr Thomas—His miscomprehension of the use of Bifurcate or exhaustive division in logic, viii. 115-116.
- — His opinion of the Defence of Usury, x. 176-177.
- — — noticed, vii. 95.
- Reinstatement**—Eventual, in the case of evidence having been found deceptions, vii. 163.
- Rejection** instead of amendment of defective measures—Fallacy of, ii. 471-474.
- Rejoinder** in civil action, vi. 480.

Relation—Ambiguity of the term, i. 120 n†.

— A physical fictitious entity, viii. 201, 264.

— Absence of language for expressing the incidence of, with respect to more than two things, viii. 108-109 n.

— of things to each other—one of the most powerful means of instruction as to their nature, viii. 109-110.

— Fictitious entities connected with—their universality, viii. 203.

— Simple fictitious entities connected with, viii. 203-205. Place, time, motion, action, and passion and reaction, ib.

— As between cause and effect—Fictitious entities appertaining to, viii. 206-210.

— The predicaments that involve, viii. 235.

Relations—Reasons for prohibiting marriages between, i. 350-352.

— beyond the forbidden degrees—Proposal to exclude the succession of, and appropriate the estate to the revenue, ii. 585-598. *See* Supply without burden.

— Social—The interests arising from, as affecting testimony, vi. 160-164; vii. 575-577.

Relationship—Aggravation of simple corporal injury from, i. 165, 167.

Relationships—Natural and legal, analysis of, i. 119-121.

Relegation—As a punishment, compared with Banishment, &c. i. 431-435.

Relief—The pleasures of, i. 19.

— to paupers—Principle of no liberation till expense of worked off, viii. 383.

— Parochial. Table of cases calling for, explained, viii. 365.

— Parochial. *See* Pauper Management.

— Out-door—Difficulties in the way of any adequate system of, viii. 440-452. *See* Poor Law.

Religion—How connected with the rise of asceticism, i. 5.

— Extent of the mischief to society, of crimes occasioned by, i. 75-76.

— Offences against, i. 101, 103-104.

— Genera of offences against, i. 134 n.

— Offences against—Their place in the penal code as a subdivision of public offences, iii. 170-171.

— Propensity to make the law interfere with, i. 147.

— Provisions for the support of, i. 316-317.

— Prejudices regarding punishments founded on, i. 412.

— Contempt for, encouraged by promiscuous intercourse in prisons, i. 429.

— Fallacy of presuming attacks on, when a bad form of, is attacked, ii. 440-441.

— Neglect of, in penal colonies, i. 494.

— How employed for demoralizing purposes in the universities, ii. 261-262.

— Influence of the exertions of the hired champions of, in the propagation of, ii. 262-264.

VOL. XL.

Religion—Influence of fallacies of authority on, ii. 393.

— Extent to which the observances of, ought to be protected from molestation, ii. 514-515.

— Providing for the exercise of, to the various sects, in prisons, iv. 23-24.

— The ordinances of, as a part of prison discipline, iv. 78-79.

— Illustrations of its inefficacy to humanize the population of a penal colony—treated with ribaldry, iv. 223-224.

— adopted in England like a bill at first reading, with liberty to amend, v. 201.

— Natural and revealed—repugnance of judicial oaths to, v. 457-458.

— How employed by tyranny to extirpate morality, vi. 117 n.

— Mistaken presumption, that all men act under the influence of, vi. 320 n†.

— not to be taught in the Chrestomathic school, as it might exclude some persuasions, viii. 40-42.

— Those who think it requires coercion to protect it, cannot be sincere believers in, viii. 516.

— The crimes committed through, more to be dreaded, than those committed against, viii. 547.

— Securities against vexation on account of, proposed for a Mahomedan state, viii. 583-584.

— Extent to which the Instruction Minister authorized to interfere with, by the Constitutional Code, ix. 442.

— Danger of a zeal for, when it is contradistinguished from morality, x. 70.

— Established—Reasons against, in a free state, ix. 92-95. If the doctrine be true—needless, 92. If untrue—pernicious, ib.

If supposed true, but unacceptable, paying clergy will not make it more acceptable, ib. The mode compared with hiring false witnesses—reward held out to all who will set their hands to a certain creed, 93.

Demoralizes the minister, by confusing his notions of right and wrong, ib. A certificate of belief, in the falseness of the creed or its inability to support itself, 93-94. Fallacy of the notion, that when truths are felt as so important, people will not of themselves follow them out, 94.

Real motives for establishments—disposal of patronage, spiritual despotism, &c., 94-95.

Religious belief—The disposition to coerce for, traced, vii. 109 n.

— Exclusion of witnesses on the ground of, discussed, vi. 106; vii. 420-427.

— Exclusion of witnesses on the ground of, caused by antipathy, vii. 426-427.

Religious establishments, are legislation for the subversion of truth by bribery for the support of given opinions, ix. 35.

Religious establishments—Reasons why there is no provision for, by the Constitutional Code, ix. 452-453; Purchases insincerity, ib.

Religious instruction—as an object of Prison discipline, iv. 122.

— for convicts—Requisites of, i. 500.

Religious observances among convicts—Inadequacy of the Transportation system—Efficacy of the Panopticon for, iv. 176.

Religious partiality—Means for neutralising the influence of, on juries, v. 165-167.

Religious persuasion as influencing sensibility, i. 30-31.

Religious restrictions—Motives that have led to, in England, i. 437.

Religious sanction—Definition of the, i. 14.

— Motive corresponding to the, i. 52, 56.

— Difficulty of finding the exact rank of the motive corresponding to, in the scale of motives, i. 58.

— Disposition inferred from acting on, i. 63-64.

— considered as a standing tutelary motive, i. 66.

— Pleasures and pains of the, with the correspondent interest and motives, i. 201.

— Source and direction of the, iii. 291.

— Employment of the, as a means of preventing crime, i. 564-567. Should be in conformity with utility, 564. Therefore no coercion, 564-565. Demoralising effects of intolerance, 565. Employment of the sanction by the magistrate dependent on his authority over it, 566. Evil direction that the sanction has taken, ib. Worse direction of irreligion, ib. Oaths, 567.

— injured by the practice of demanding unanimity of jurors, v. 464.

— Effect of, on evidence, vi. 20-21, 260-261, 270-276; vii. 583.

Religious sensibility and bias—Influence of, i. 24.

— Offences against, i. 174.

Remanet, when a jury trial deferred, vi. 104.

Remedial measures—Inability of the Common-law courts to take, vii. 294.

— services by judges in relation to procedure, ii. 39-40.

Remedy—Definition and nature of a, iii. 214.

— quibble of saying the law gives one for every right, vi. 148.

— Legal—Compensation as a, ii. 110-115.

Remedies—Legal. Various kinds of, ii. 90-92.

— against offences. The various kinds of, i. 367.

— Suppressive for chronic offences, i. 369-370.

Remedies by English law—their dependence on the nature of the evidence, iii. 361-362 n.

— Punitive and satisfactive—evils of their being administered in distinct tribunals, v. 531-532.

— succedaneous to exclusion of evidence, vii. 368-383. *See* Exclusion.

— suggested for the evils of the technical system of judicature, vii. 320-329. Officers for the department of law-reform, 320. Substitution of the natural to the technical system, 320-321. Natural contrasted with technical procedure, 322-324. Abolition of special pleading, 325-326. Abolition of fees, 327-328.

— The complex variety of, afforded in English practice, vi. 475.

Remembrance, Reminiscence, &c., as logical operations, viii. 224-225.

Remembrancer in Exchequer—Obscurity of the origin of the office, vi. 68 n *.

— Sir Richard Phillip's attempt to get him to strike special juries in terms of the act, v. 155-156.

Remembrancer of the City of London—Origin of the office of, vi. 68 n *, 554 n.

Remissibility as a property of a punishment, i. 95-96, 406.

Remission of Punishment—Provisions for in the Constitutional Code, ix. 600-607. *See* Justice Minister—Dispunitive Function.

— *See* Pardon.

Remitter of a cause in English practice—Defectiveness of, vi. 420.

Remoteness in time or place—Effect of, in creating belief in improbabilities, vii. 89-90.

— of testimony from seat of perception—Effect of, vi. 222-223.

Remuneration as *ex post facto* reward, ii. 203-204.

— Large—fallacy that it is necessary for the support of official dignity, v. 316-318.

— Counterpart of intimidation as an instrument of government, ix. 47-48.

— and attendance—Plan for connecting, in the case of a legislative body, ix. 163-166.

— all above what will procure the service is waste, ix. 200.

— of officials—The system of, in the Constitutional Code, ix. 266-271.

— Reasons against increasing, for length of service, ix. 295-296.

— of army and navy—Provision for, in Constitutional Code, ix. 371-381. *See* Defensive Force.

Remuneratory Laws—Plan of, iii. 203.

Rennel—Major, noticed, xi. 122.

Reparation to the sufferers by offences, i. 371-388. *See* Satisfaction.

Repeating—The faculty, when unaccompanied by comprehension, a useless acquisition in schools, viii. 44-45.

Repetition as distinguished from continued act, i. 37.

- Power of, in aggravating small offences, i. 377-378.
- or amendment, in equity cases, vi. 455-458.
- of evidence, on the Scottish system, vi. 451-458. *See* ReExamination.
- in terminis and in purport as defects in literary composition, viii. 271.

Replication in civil action, vi. 480.

Reply—Privilege of, in debating, considered, ii. 359-360.

Replies to written evidence should be numbered in conformity with questions and answers, vi. 441-443.

Reports as a foundation for legislation—The proper system of, expounded, and the existing systems criticised, in Plan for Legislation Inquiry Judicatories in Constitutional Code, ix. 181-188. *See* Legislation.

- False. Principles of satisfaction to persons injured by, i. 375-376.
- False. Position of offence of, in Penal Code, iii. 168.

Reports of Decisions—a means by which judges, reporters, and booksellers manufacture law, iv. 484-486.

- — — Various elements of uncertainty that may characterize the law deduced from, iv. 486 n.
- — — Effect of publishing, vii. 315-316.
- — — Extent of the body of, in England, excellent materials for a code, ix. 26.

Reported real evidence, i. e. supposed real transmitted through oral or casually-written, vii. 152-154.

Reporting in legislative bodies—as a means of giving publicity to their proceedings, ii. 315; vi. 78-79.

Reporting witness judicially appointed—Functions of a, vii. 153.

Repose as an element of felicity, ix. 15.

Repositories for preappointed evidence, vi. 553-561. *See* Official Evidence.

Representation—How far exposition can be carried on by means of, where parties have no common language, viii. 243-244.

- Corruption of, in England, ii. 293-294.
- Coextension of, with Taxation—the principle criticised, iii. 467 n.
- Inadequacy of proposed moderate reforms in the, iii. 519-521.
- and population—Considerations regarding the proportions of, to each other, iii. 583-584 n.
- of the People—A Bill to reform the, iii. 558-597.
- The principle of, necessary to any country large enough to defend itself, ix. 47.
- The non-existence of, in Britain when the Book of Fallacies written, ii. 445.

Representation—Reform in the. *See* Reform.

Representations in Scottish procedure—Fees and delay from, vii. 221-225.

Representatives—how far they should be liable for, or should be entitled to, compensation for offences, i. 523-525.

Representatives—(as applied to members of a legislature)—Indefinite meaning of the term, ii. 507-508.

- Deputes a preferable term to, ix. 155-156.
- Conditions requisite to existence of confidence in, ii. 301 n.
- Publicity as to the proceedings of, ii. 310-317.
- Influence that public-opinion ought to hold over, ii. 368.
- Dependence of, as regards electors—Independence as regards others, iii. 455-457.
- Universal constancy of attendance of, iii. 457-458.
- Inapplicability of secret voting to, iii. 490.
- Impermanence of their situation through short Parliaments urged on the ground of utility and usage, iii. 511-516.
- Reëligibility of—Opinions on, expressed in Tract on the proposed Portuguese Constitution, viii. 483-485. Later formed opinion, 485 n.
- Who should be authorized to choose in a free state, ix. 95-113. *See* Constitutive—Supreme.

Representative Democracy—Reasons why it affords the best securities against misrule, ix. 10.

Representative System—Origin and progress of, in England, ii. 444.

Reprisals in War—Incidence of, i. 480.

Republic. The most perfect form of Government, ix. 2.

- The Constitutional Code chiefly adapted to a, ix. 2.
- Estimate of the comparative merits of the Federative, and the simple form of a, ix. 643-647.

Republics—Frugality of rewards in, ii. 201.

- Absence of insurrection and distress in, as exemplified in America, iii. 612-613.
- Difficulty in reconciling to judicial privacy in cases where it is necessary, vi. 372.
- Absence of temptation to commit state offences in, ix. 36-40.
- Extent to which public amusements sought in, i. 318.

Reputation—The pleasures of, i. 18.

- Motive corresponding to the pleasures of, i. 51, 56, 57.
- Disposition in connexion with, i. 62-63.
- A standing tutelary motive, i. 65-66.
- Weight given to sentiments by, i. 232.
- Love of, as connected with the exercise of benevolence, i. 561, 563.

Reputation—Authority derived from, ii. 389.
 — How the desire of, affects argumentation, viii. 237.
 — Good and bad. Distinction between, defined, i. 463.
 — Pleasures of good, and pains of bad, with the correspondent interest and motives, i. 201.
 — Value of, overlooked in estimating the reward of official persons, v. 317-318.
 — Easier protected to the powerful than to the weak, independently of assistance from Libel law, v. 247.
 — Nature of property in, with relation to forfeiture as a punishment, i. 152-153.
 — as an object of security by the law, iii. 213.
 — As an object of security by the Constitutional Code, ii. 270 n.
 — When attacks on should be punished? ii. 270.
 — of official persons—Propriety of sanctioning scrutiny into, ii. 425-427.
 — of deceased persons—Considerations as to legal protection to, x. 518.
 — The law may work upon, as well as upon property and person, vii. 50 n.
 — of an accused person—How far it is evidence, in regard to the accusation, vii. 56-60. *See* Character.
 — of theft—Punishment for, illustrated in English practice, vii. 446 n.
 — How far danger to violation of, justifies restriction of judicial publicity, ii. 44; vi. 364-367.
 — Regard for—Effect of on testimony, vii. 570-571.
 — of judge—Publicity protects, vi. 355.
 — Forfeiture of as a punishment, i. 450-467.
 — Pecuniary. *See* Pecuniary Reputation.
 Reputation—Offences against, as a division of private offences, i. 99-100.
 — — as a subdivision of private offences, iii. 164-165.
 — — as a subdivision of self-regarding offences, iii. 168.
 — — as a subdivision of semi-public offences, iii. 168.
 — — Considerations as to time and place with regard to, i. 175-176.
 — — Considerations as to whether the protection of official persons from, should not be a degree less than that of private citizens, viii. 510.
 — — Satisfaction, as applicable to, i. 375.
 Reputation and Person—Offences against, i. 100, 118-119.
 Request—Courts of, natural procedure before, vii. 321-323.
 — Smallness of the skill required in, iii. 400.
 Requisite functions of Ministers collect-

tively in the Constitutional Code, ix. 253-257.
 Resentment—Indignation, &c., as designative of motives, i. 203.
 Residence with relation to jurisdiction, ii. 27-28.
 Resident—Rank of, as a foreign minister, ix. 228.
 Resistance to Motion—Divided into counter-motion, and *vis inertiae*, viii. 128-129.
 — National. When justifiable, ii. 545.
 — justified by attacks on liberty of the press, ii. 121.
 — to Government—Under what circumstances commendable, i. 287-288.
 — How far recourse to, may be necessary against a popular Legislature, ix. 121.
 — to oppression—Imprescriptible right of, according to the French declaration, criticised, ii. 504. A mere license to resist what one dislikes, ib.
 — Faculty of, the security of a free government, ii. 287.
 Resolutions of political assemblies—Matters to be attended to in framing, ii. 334.
 — on Parliamentary Reform, drawn by Bentham and moved by Sir Francis Burdett, x. 495-497.
 Respect—Factitious honours, considered as drafts for on a nation, and the effect on society, ix. 78-92. *See* Honour.
 — Education a means of securing, viii. 3.
 — to persons in authority—Mischief of the proposition that nothing should be done to reduce, vii. 331.
 Respondentia—Virtual usury sanctioned by the law, in bonds of, iii. 14.
 Responsibility of parties for offences committed by others, considered, i. 383-386.
 — Civil, of one person for another, distinguished from misseated punishment, i. 478.
 — of public officers—How to increase, i. 548.
 — the effectual protection from judicial malversation, ii. 31.
 — of applicants for judicial services—Securing the, ii. 42-43.
 — How to adapt remuneration to the securing on the part of persons in employment, ii. 234.
 — Of representatives to their constituents, ii. 301 n.
 — Power without—Trustworthiness in inverse ratio of, ii. 389-390.
 — The absence of, in connexion with fallacies of authority, ii. 393-394.
 — Secret voting inapplicable in cases demanding, iii. 490.
 — to the public—greater in the case of single (especially if contract) than in board management, iv. 125-134.
 — A word requiring special exposition, when used in law, v. 413.
 — Official, considered, vi. 556-559. Only

in its burdensome sense—carrying with it risk of actual loss—that it is efficacious, 556. If it arise only from power, the higher it is, the less to be trusted, 557. Illustration from declarations of opinion, which may be purchased to any absurdity, *ib.*

Responsibility—Weakened by the aggregation of officers constituting a board, or corporate body, *vi.* 557-559.

— Official, in regard to correct registration, *vi.* 72-73.

— How it is weakened, according to the numbers among whom it is spread, *i.* 571; *vi.* 379.

— False notion that it can be created by reward—can only be by punishment, *ix.* 151-152, *n.*

— Analysis of the various kinds of, applicable to rulers, *ix.* 152-153.

Responsive exercises—Nature of, in the Chrestomathic system of Education, *viii.* 14.

Rest—a physical fictitious entity, *viii.* 200-201.

— or the absence of the fictitious entity called motion, divided into absolute and relative, *viii.* 130-131.

— Sciences involving the predicament of, *viii.* 288.

Restitution in kind, as satisfaction to the sufferers by offences, *i.* 374-375.

— Actions of, ranked as non-gradable, *ii.* 84.

— Absence of provision for, at common law, shows want of codification, *v.* 487.

— Provision for eventual, in case of decision on weak evidence, *vii.* 125.

Restoratives to the competency of evidence by English practice, *vii.* 433-440. Are proofs of the absurdity of exclusion, 433. Burning, 434-435. Great seal, 435. Sceptre, 435-436. Confessing to error in record, 436-438. Resigning interest, 438-440, 507.

Restraint as an offence—Nature of, *i.* 111.

Restraint in relation to punishment and forthcomingness, *i.* 393.

Restriction as a mode of exposition, *viii.* 248.

Restrictions—Religious—motives on which they were established in England, *i.* 437.

— on labour, &c., illustrated, *ii.* 225.

— on trade—Effects of, *iii.* 57-58. Discourage one branch to enhance another, *ib.* When the profit made by one instead of another, government takes credit for creating it, *ib.*

— on trade—Substituting licenses for, a means of raising revenue, *x.* 304.

Restrictive punishments defined, *i.* 420.

— The kind of, described as simply restrictive, *i.* 435-437.

Restrictive and prohibitory commercial system—Nature of the, *iii.* 88-96. If the goods prohibited would not be purchased, useless—if they would, mischievous, 88-89. In the latter case, a tax without benefit of revenue, 89. If the home article too dear to be purchased, simple infringement on comforts, *ib.* Smuggling, 89-90. Losing the foreign market, 90-91. Dearer instead of cheaper commodities, 91. Inferior quality, *ib.* Home manufacturers deprived of employment, 91-92. Loss of duties on imports, 92. Seizures, *ib.* Conflicts with revenue officers, and crimes, 92-93. Rivalry with the provinces professed to be benefited by the prohibition, 93-94. Retaliation by other states, 91. Foreigners and smugglers looked on by the people as friends—their own government as enemies, 94-95. Takes the character of infamy away from crime, 95. Founded on a false estimate, when acted on will ruin those concerned, on the restoration of the natural system, 95-96. Application to new and to old established trades, 96.

— Causes of the, *ii.* 96-100. Combined exertions by self-interested parties, 96. Secret influence, 96-97. Absence of these auxiliaries to the cause of the people at large—the consumers, 98-99. Landed interest and corn laws, 99-100. Legislative incapacity, 100.

Restrictives—Proper employment of, in language, for the avoidance of ambiguity, *viii.* 314-315.

Retaliation—Punishment by, *i.* 92, 409-411. Circumstances necessary to make it complete, 409-410. Offences to which it is inapplicable, *i.* 410-411.

— Punishment by, considered in respect to the quality of characteristicness, *i.* 403-404.

— What kind of offences admit of, *i.* 140-141.

Retreat—Pensions of—Opinion against, in Constitutional Code, *ix.* 31.

— Reasons in favour of, in the military department, not applying in the civil, *ix.* 373-374.

— Dumont on, *ii.* 215-246.

— Difference of opinion with Dumont on, *ii.* 191.

Retrenchment—Application of the non-disappointment principle to the neutralisation of the hardships of, *v.* 266-267.

Retrenchments—That many have been made, no excuse for not making more when there is a demand for them, *v.* 323-324.

Retributive sanction—The, a lately discovered one, *i.* 14 *n.* *

Return to a Mandamus, in English practice, characterized, *vi.* 462.

Revelation—Law of. Blackstone's opinion that no human law should be suffered to contradict, criticised, i. 286-287.

Revey—William—Author of Views in the Levant, noticed, iv. 78 n, 80 n, 83; x. 157, 228, 274.

— — and his wife—their acquaintance with Bentham, x. 251-252.

Revenge—Nature of, i. 53.

— Extent of the evils to society of crimes occasioned by, i. 75.

— The pleasures of, with the corresponding interest and motives, i. 203.

— Nature and operation of, in regard to satisfaction for offences, i. 382-383.

— the natural punishment of a barbarous state of society—Legal redress a substitute, i. 542.

— Pleasure of the exercise of, not equal to the pain produced—an axiom, iii. 226.

— Influence of, never taken into view by lawyers, vi. 475.

Revenue—Programme of three sources of, escheat—taxing the traffic on money—substituting licenses for commercial restrictions, x. 304.

— The. Advantages of Project of conversion of stock into Annuity notes to, iii. 123-132.

— Proposal to appropriate to, estates not succeeded to by relations within the forbidden degrees, ii. 585-598. *See* Supply without burden.

— Colonies no assistance to, unless by compulsory taxation, iv. 414.

— Fines to, should give place to compensation to party injured, i. 388.

— Frauds and offences against. Wrong tone of public-opinion regarding, and remedy, i. 464-465; vi. 268.

— Offences against. Jury-trial a protection in, ii. 119, 135.

— Offences against—their place in the Penal Code, iii. 170.

— causes. Special juries invented for the purposes of, ii. 138.

Revenue officers—Rewards to, from captured goods, ii. 199.

Revenue prosecutions—a species of collusion that has been practised by compounding, x. 84-85.

Revisals—How far correctness of transcripts secured by, vi. 171.

Revolt—What constitutes a state of, i. 266.

— Principles of resort to, iii. 219.

— Precautions against, on the part of governors, i. 572.

Revolution of 1688—reduced the sovereign's power, but added to sinister influence of Lords and Commons, iv. 446-447.

— — an innovation, ii. 418.

— — The quibbles and fictions connected with, in Parliament, ii. 288.

— — Utility of the contract form as a means of limitation seen in, viii. 575.

Revolution of 1688—Criticism on the use of the word abdicate at the, ii. 409; iii. 508-509.

— — Use of the term glorious, in relation to, as a vague generality, ii. 447-448.

Revolutions—Circumstances justifiable of, ii. 287.

— in public-opinion—how produced, i. 564.

REWARD—The principles of, ii. 192-235;—

— Definitions as to, ii. 192-193. Definition of reward, 192. Services to which applicable—ordinary and extraordinary, 193.

Rewards, occasional and permanent, ib.

— Matter and sources of, ii. 193-197. To good what punishment is to evil, 193-194.

Composed of money, 194. Of honour—ranks, orders, &c, 194-195. Power, 195.

Exemptions, 196-197.

— and punishment combined, ii. 197-198.

— Reasons for husbanding matter of, ii. 200-203. Honours, power, exemptions, monopolies, 200. Evils of prodigality, 200-201. Exemplified in the peerage, 201.

Illustrations, 202-203.

— after the service or remuneration, ii. 203-204.

— and punishment. Relations of to each other, ii. 204-208. Latter preferable, when it will serve, 204-205. Former expensive—latter not exacted, but where incurred, ib.

Reward necessary for extraordinary services, 205. When punishment attempted for these, tendency to keep down the qualifications, 206.

Distribution of onerous duties, 207. Resumé, 207-208. Adam Smith's opinions, 208.

— Where hurtful, ii. 208-212. Having tendency to interfere with duty, as Judges' fees, 208-209. Emoluments of Paymaster of Forces, 209. Inspectors of Public Works paid according to outlay, 210.

Encouragement of falsehood—University oaths, ib. Rewards for propagation of opinion, 211. Misplaced charity, ib.

Official remuneration so great as to tempt to idleness, ib. Tax on justice a reward to injustice, ib. Temptation to crimes by the law of succession, 211-212. Insurance, 212.

— Where needless, ii. 212-213. Inventions, &c., which reward themselves in commerce, ib.

— Proportion in, ii. 213-216. To outweigh burden of the service, 213-214. To be considered in conjunction with natural reward, ib. Should be so adjusted, step by step, to value of service, 214. Where two services in competition, the reward to be adjusted to the more important, 214-215.

— Choice as to, ii. 216-220. Variable, equitable, commensurable, exemplary, economical, characteristic, popular, fructify-

- ing, 216. Illustrations of various kinds, 217-220.
- Reward**—Procedure as to, ii. 220-222.
- To informers, ii. 222-223.
 - To accomplices, ii. 223-225.
 - Competition as to, ii. 225-229. Disadvantage of limiting, 225-226. Objection that the labour of unsuccessful competitors is lost, answered, 226-227. General good effects of competition on trade, 228. Application to public works, &c., ib. Application to legislative systems, 229.
 - How far applicable to virtue, ii. 230-233*. Inapplicability to mere passive qualities—requisition of action, 230-231. Application on a limited scale, 231. Seizing striking instances of exertion, ib. Publicity, 231-232. Local inspection—not that of government, 232. Public esteem the best reward, ib.
 - Accompaniments to, ii. 233-235. Wages, 233-234. Instruction, 234. Equipment, ib. Indemnity, ib. Insuring responsibility, ib. Guarantee against temptation, ib. Support of dignity, 234-235. Excitement to alacrity, 235.
 - applied to offices, ii. 235-252.
 - to be economised, in the Constitutional Code, ix. 150-151.
 - Opinion that money is the only kind statesmen will be influenced by, combated, v. 313-316.
 - Application of, to the preservation of life, illustrated in the case of ship surgeons, &c., iv. 196-197.
 - applied to art and science, ii. 252-260. See Art.
 - when exuberant—its effect in creating a system of patronage, iv. 552.
 - Principles of, as applied to public servants, discussed in official aptitude maximized, expense minimized, v. 265-386.
 - How far applicable to the exaction of labour from felons, iv. 12-13.
 - by Parliamentary sanction, and from secret service-money, contrasted, v. 287-290. Former requires ostensible service—latter not, ib.
 - uses of the distinction of effects of the first and second order, with reference to, iii. 289.
 - Responsibility cannot be created by, ix. 151-152 n.
- Reward-economising principle**, in the management of the Chrestomathic school, viii. 48.
- Reward**—Rationale of, ii. 192-266.
- — Preliminary observations to, ii. 192.
 - — Transference of matter published under, to Manual of Political Economy, iii. 33 n.
 - — notice of the preparation of, in Russia, x. 170.
- Reward**—Rationale of, Dumont's account of the MSS. of, i. 388-389.
- Rewards**—Plan of legislation as to, iii. 203.
- Proper method of making them subservient to the execution of the Penal Law, iv. 393-404.
 - more accessible to the domestic than to the political governor, i. 569.
 - Influence of, on belief, vii. 108-110.
 - for declarations of opinion—Demoralising effects, ii. 262-266, 397.
 - to informers—Effect of, considered, vii. 490-492.
 - to informers—Cause of the frequent failure of, i. 564.
 - to informers—Principles of so adjusting that they may not be calculated on so as to tempt informers to excite to crime, ix. 573-575.
 - for convictions—Absurdity of not holding the prosecutor a good witness in the case of, iv. 395-396.
 - to Revenue officers from captured goods, a specimen of self-executing laws, ii. 199.
 - The principle of establishing, for essential services, though voluntarily rendered, i. 340.
 - for public services—Burke's plea for the employment of the public domains in, controverted, v. 284-286.
- Reynold's**—Sir Joshua—Reminiscences of, x. 48.
- — — noticed, v. 301.
- Reynoso**—Don Felix José. His work in favour of an upper house in Spain, viii. 467.
- Rhetoric**—Its etymology, origin, and modern acceptance, compared with those of grammar, viii. 91-93 n.
- Ends pursued by the writers on, ii. 379-380.
 - Too often substituted for logic, in legislation, viii. 509.
- Rhyme**—fixes itself on the memory, by the association between import and sound, viii. 229.
- Rhythm**—application of melodiousness as a property of language, to, viii. 306.
- Ricardo**—David—Account of, x. 493.
- — Letter to, x. 498.
 - — casually noticed, x. 468, 484, 533.
- Rich**—The. Felicity does not rise in the ratio of the property of, its principal elements being common to all classes, ix. 15-17.
- — More the enemies of the poor than the poor are of them, ix. 143-144.
 - — Reasons why they are less moral than the poor, x. 519.
 - — Treasure of, an insurance office to the indigent, ix. 34.
- Richards**—Chief Baron, noticed, v. 355, 356.
- Richardson**—Judge—Opinion of, x. 571.
- Richardson**—Samuel—Novels of. Bent-

- ham's reminiscences of reading, in his boyhood, x. 21, 22.
- Riches—Aptitude, moral and intellectual, for the exercise of political power, sinks instead of rising with, ix. 110-113.
- Their tendency to reduce the motives to exertion, iv. 364-365, 374-375.
- Richmond—Duke of, (the third,) connexion of, with a negotiation between Lord North and the Rockinghams, x. 102-103.
- — — Probable reason for his supporting universal suffrage, iii. 527, 534.
- — — His pamphlet on universal suffrage, iii. 446.
- — — Visit of, to Bentham, x. 60.
- — — His opinions on Radical Reform, iii. 458, 461, 467.
- Rickman—Mr. His preliminary remarks on the Population Returns, noticed, iii. 583-584 n.
- — — Praise of his Population Returns, v. 411.
- Ridicule—Preservation of parties wronged from, in courts of justice, ii. 114.
- Dangerous effect of introducing in legislative proceedings, ii. 366.
- employed against reformers to protect abuses, v. 96.
- Tendency to hold as libel, v. 110-111.
- Riego—Testimony to his services to Spain, viii. 467.
- Riflemen—Reasons why they are not more generally employed in warfare, ix. 398.
- Right—a word requiring special exposition when used in law, v. 413.
- as the converse of duty, i. 292-293.
- must correspond to obligation, vi. 294 n.
- that the law gives none without a remedy—a quibble, i. 186; vi. 148.
- The, of the supreme power to make laws, considered, i. 283-292.
- Confusion of the adjective with the substantive, ii. 523.
- Use of the substantive, implies the justification of violence in favour of what it is employed to support, ii. 522-523.
- Right and wrong—meaning of the terms, i. 2.
- — — The various systems regarding, reducible to the principles of sympathy and antipathy, i. 8.
- Rights, as the counterpart of obligations, i. 301-302, 338.
- as the counterpart of obligations, with reference to procedure, ii. 16-17.
- Use of viewing, as the counterpart of obligations, iii. 293.
- as the counterpart of obligations—Analysis of the sources of, in the Introduction to the Constitutional Code, ix. 18-19.
- to the services of others, i. 338-340.
- Fallacy of the proposition that all men are born, and remain equal in, ii. 498-499.

- Rights—People ready enough to watch their own, without a Declaration, ii. 511.
- the fruit of laws, ii. 523.
- as distinguished from property—Sieyes' doctrine as to equality in, considered, ii. 533.
- Laws concerning; their relation to those concerning offences, obligations, and services, iii. 158-160.
- Connexion of, with services, iii. 180.
- as a general title of the civil code, iii. 181-186. Division from diversity of source, 181. Division from diversity of objects, ib. Division from subjects upon which exercised, 181-182. Division from extent of field—private and political, 182. Division from the person in whose favour exercised—personal and fiduciary, ib. Division from divisibility—integral, fractional, and concatenated, ib. Subdivision of integral—occupation, exclusion of others, disposition, and transmission, ib. Limitations of rights of occupation, 182-183. Right of alienation, 183. Acts the measure of rights, 184. Confusions in the Roman division into rights of persons and rights of things, ib. Confusion as to rights independent of the Laws, 184-185. Table of Divisions of Rights, 185. Principal heads, ib. Rights over things, ib. Rights over persons, 185-186.
- Collative and ablative events, with relation to, iii. 186-190. Discovery, 186. Possession of productive things, ib. Possession of a receptacle, ib. Amelioration, ib. Fortuitous obliteration of distinctive character, 186-187. Private disposition, 187. Disposition by the magistrate, ib. Judicial seizure, ib. Occupation of thing abandoned, ib. Testament, ib. Nomination to and dismission from office, ib. Contract, ib. Possession, 187-189. Considerations as to nomenclature, and use of the word Title, 189-190. Table of collative events, 190.
- Exposition of the term, with reference to a Universal Code, iii. 217-221. Efficient causes of, in absence of and presence of obligation, 217-218. A fictitious entity, 218. Effect of using the terms natural, moral, and political, with, ib. Political the only proper qualification to, ib. Confusion of adjective with substantive, ib. Violence produced, 218-219. Reason why rights should be constituted is, because they are useful, and originally there were none, 219. True origin of Governments—habits of obedience, ib. Limits of obedience, ib. Uses that have been made of fallacious appeals to rights, 220. Foundation of support of rights on utility, 220-221. Different kinds of right, 221. Law their foundation, ib.

Rights—Predicted disturbance to, from codification, answered, iv. 450-460.

— of individuals—impossible to discover, in England, from incognoscibility of the laws, v. 547.

— An expression applied to unexplained and fictitious entities, vi. 9 n.

— Application of preappointed evidence to, vi. 60, 508.

- New—Nature and description of, vi. 8 n. †.

— Securities a preferable term to, in constitutional documents, vii. 557.

— Imprescriptible—Fallacy and mischief of the expression, ii. 500-502. Presume something anterior to Government, and which cannot be altered by it, 500. Dependence of rights on Government, 501. Natural effect to keep up resistance to the laws, ib. Real origin of Governments, 501-502.

- and obligations attached to different private conditions, i. 343-358.

- and Powers—Definition of, and reference to obligations, i. 105-106 n.

— Declaration, Bill, or Petition of. *See* Bill of Rights; Petition of Rights.

— Declarations of, during French Revolution—Examination of, ii. 489-529. *See* Declaration of Rights.

— French declarations of—Allusions to the doctrines of, i. 358; iii. 218-220.

— Declaration of, as proposed by Sieyès—Observations on, ii. 530-534.

- Declarations of—Letter to Brissot against the principle of, x. 214-215.

— Essential—Fallacy of declarations of, ii. 521-524.

Rigorists and Liberals—their disputes concerning evidence, vi. 145-148.

Riot—Character of the offence of, f. 369.

- Provisions for the suppression of, in the Constitutional Code, ix. 617.

Riot-Act—Inconvenience of reading the, i. 370.

Riots—Proper methods of dispersing, i. 370-371.

- aggravated by rash interference, ii. 311.

Ri—All—The price of, considered in all commercial and pecuniary transactions, i. 387.

Rites—Religious—How far the exercise of, should be protected from molestation, ii. 514-515.

Rivadavia—Notice of, x. 500.

— Letter to, x. 513-514.

— Account of the Presidency of, by General Miller, xi. 16.

- Casual mention of, x. 566.

Robbery—Nature of the offence of, i. 118.

— A general equalization of property would be, i. 361.

— Examination of the circumstances which encourage and discourage, i. 70-71.

— Elements of the dangerous nature of, i. 75.

Roberts—Dr., a naturalist—Visit by Bentham to, x. 46.

Robespierre noticed, x. 259.

Robinson—John, (Lord Ripon,) noticed, v. 352, 368, 377; ix. 293.

Robinson Crusoe—Bentham's reminiscences of reading, in his boyhood, x. 21.

— — referred to, vii. 94.

Robinson—William Davis. His work on the Mexican Revolution quoted as the foundation of the Junctionana Proposal, ii. 561-563.

Rocha—Dr. His translation into Portuguese, of the tract on the liberty of the Press, viii. 482.

Rochevoucauld—Liancourt, Duke de—Letter from Lord Lansdowne to, with his opinions on Bentham, x. 226-227.

— — — Communication of the news of the murder of, x. 285-286.

— — — Casual notices of, x. 212, 219, 237, 262, 280, 316, 379; xi. 75.

Rochevoucauld noticed, i. 49 n. †.

Rochester—(John Wilmot,) Earl of, noticed, v. 202.

Rockets compared with cannon as an instrument of destruction, ix. 349-350 n.

Rockingham—Marquis of, noticed, v. 283, 301; x. 214.

— — — An account of an overture by Lord North to, x. 102-103.

Rodios—P. G., Secretary of the provisional government of Greece—Correspondence with, on form of Government for liberated Greece, iv. 583.

Roebuck—J. A.—Mention of, xi. 81.

Roget, Dr.—Letter from, on the preparation of Nitrous Oxide gas, x. 342-343.

— — Correspondence with, on the practicability of a frigidarium for the preservation of vegetables, fruit, &c., x. 346-350.

— — Mention of, x. 186.

Roland de la Platière—Letter of, with the announcement of Bentham's being made a French citizen, x. 281.

Rolls—Master of—Proposed absorption of the court of, in the Chancery, v. 553-563.

— Master of—origin and jurisdiction of, vi. 423.

Romans—(Ancient) Prostitution among the, i. 546 and n.

— Ferocity of, nourished by gladiatorial shows, &c., i. 562.

— Frequent revolts of governors among, and the reasons, i. 572.

— Honorary rewards for merit among, ii. 218.

— Pernicious ambition of the, ii. 218.

— Moderateness of pay of military commanders among, compared with the British system, ix. 378.

— Absence of duelling among, promoted assassination, i. 543.

Roman Catholics. *See* Catholics.

Roman Law—Intentionality and consciousness, according to, i. 45 n. †.

— — Period of majority by, i. 79.

Roman Law—*Legitimitas per subsequens matrimonium* of, i. 128 n*.

— Want of method in the, i. 139 n*.

— as to compensation to sufferers from offences, i. 373.

— Indicative evidence acted upon by, ii. 57.

— Influence of, in England, ii. 152.

— distinguished for Fallacies of authority, ii. 393.

— Arrangement of the Books of, iii. 162-163.

— Effect of counting slaves as things by, iii. 177.

— Division of things in, iii. 178.

— Division of, as to rights of persons and rights of things, criticised, iii. 184.

— Nomenclature of, as to contracts, criticised, iii. 189-190, 191.

— A leaning to the practice of, in England, in the reign of Mary, v. 532.

— System of extraction of evidence under, vi. 32 n.

— Cross-examination and confrontation, in evidence, according to, vi. 33-34, 501-504.

— Deposition according to, vi. 36-37.

— Affidavit evidence according to, vi. 38.

— Examinations by commission derived from, vi. 114.

— Scientific evidence according to, vi. 229.

— Attempts of, to express degrees of probative force, vi. 230-231.

— Forgery ranked by, under the *crimen falsi*, vi. 247;

— The *dolus* of, a peculiarity, vi. 248.

— *Culpa* and *temeritas* according to, vi. 249 n†.

— Defects of, in punishment for false testimony, vi. 302.

— The oaths in, vi. 322-323.

— Judges sole examiners in high crimes according to, vi. 345.

— Errors of, in respect to publicity and privacy in judicature, vi. 372-380. *See* Publicity.

— Method of authenticating depositions by, vi. 417.

— Local judicatures of, vi. 430 n†.

— Examinations under, are only employed in purport, not in tenor, vi. 440.

— Mode of examination of, partakes of Scriptural and *circa voce*, vi. 444.

— System of re-examination under, vi. 451-454. *See* Re-examination.

— Incongruities of, in respect to extraction of evidence, vi. 499-501. *See* Extraction.

— Rule as to *corpus delicti* in, vii. 69 n†.

— Importation of equity from, vii. 297.

— Exclusion of evidence, probably imported from, vii. 390.

— Danger of mendacity from method of collecting evidence under, vii. 392.

— Paucity of legal fictions in, vii. 419-420.

Roman Law—Confessorial evidence under, vii. 446.

— Aberrations of, in respect to the requisition of more than one witness, vii. 525-530.

— Secrecy of examination according to, vii. 538-542.

— Aberrations of, in respect to making some kinds of evidence conclusive, vii. 549-558.

— casually animadverted on, i. 349; ii. 72, 83, 157; iv. 460, 514; v. 37, 92, 108, 408; vi. 32 n*, 38, 39, 170, 395, 399, 421, 462, 465, 486, 491, 492-504, 547 n; vii. 69, 70, 160, 327 n, 370, 489; viii. 474, 478, 480, 538, 539, 540; ix. 458; x. 581.

Romantic—Application of the expression, to political projects, ii. 459.

Rome—Church of—whether it differs with that of England on infallibility, v. 210-211.

— The dispensing power of, as an instrument of Priestcraft, v. 223-224.

Rome—History of. Evil principles inculcated in, i. 318.

Romilly—Sir Samuel—how the author's friendship with, was formed, i. 249.

— His testimony in favour of Lord Eldon disputed, v. 370-371.

— Notice of, from Bentham's reminiscences, x. 186.

— His opinion on the work on Political Tactics, x. 199-201.

— Account by, of the forms of Procedure of the British Parliament, for the use of France—Discussion on the assistance given by Trail and Wilson in preparing it, x. 213-214.

— Specimen of his style compared with Bentham's, x. 225.

— Account of the Edinburgh Bride-well by, x. 294-295.

— Correspondence with, as to the proposal of exposing the Duke of Portland's conduct in reference to the Panopticon, x. 399-400.

— Letter of, from Edinburgh, on the state of the Scottish Judicatories, and plans for reforming them, x. 421-422.

— Letter to, on the subject of the proposed alterations in the Courts of Scotland, x. 423-425.

— His advice against printing the art of packing Juries, x. 450-451.

— His death, x. 504.

— Letters from, on the Panopticon, xi. 116, 144, 148.

— Letters to, on the Panopticon, xi. 127, 162-164.

— Miscellaneous Letters from, x. 195, 264, 287, 288, 362-363, 403-404, 420, 431-432.

— Miscellaneous Letters to, x. 423-424.

Romilly—Sir Samuel—casually noticed, i. 247; ii. 283 n; iii. 469; iv. 479, 530, 566, 567; v. 357, 562; x. 62, 228, 249, 263, 277, 280, 322, 347, 362, 382, 396, 397, 399, 428, 433, 440, 457, 471, 472, 478; xi. 81, 128, 129, 131, 133, 137.

Romilly—Lady, noticed, x. 187.

Rooke—Mr Justice, noticed, vii. 430.

Root—Square and cube—difficulty of mathematical students acquiring a clear comprehension of the meaning of, viii. 179-180.

Rope-making as an employment for prisoners in a penitentiary, discussed, iv. 102.

Rose—Sir George—Character of, x. 308.

— — — Letter from Bentham to, on the Globe Insurance Company, x. 334-335.

— — — Correspondence with, on the Annuity-note Project, x. 359-361.

— — — Defence of Economy against, v. 303-328.

— — — Advertisement to "Defence," &c., against, admitting his economy in practice, v. 302.

— — — Introduction to Defence, &c., against, v. 302-303.

— — — Opinions of, controverted, viz.;

— — — That the vastness of the whole public expenditure is a reason for not curtailing small parts of it, v. 303-305.

— — — That the decayed aristocratic families should be provided for at the national expense, v. 305-307.

— — — on the insufficiency of official incomes as remuneration, v. 307-308.

— — — on the claims which official men have to establish fortunes for their families at the public cost, v. 308-310.

— — — on the necessity of tempting men from lucrative professions by high remuneration for public services, v. 310-313.

— — — that money is the only thing which public servants can be presumed to hold valuable, v. 313-314.

— — — that money the only stimulus to official exertion, v. 314-316.

— — — that high remuneration is necessary for the support of official dignity, v. 316-318.

— — — on Mr Pitt's contracting debts, v. 318-322.

— — — on getting rid of official influence, v. 323-324.

— — — His communication with Bentham on the Protest against law taxes, ii. 582.

— — — Conduct of, as to the Panopticon Penitentiary, xi. 103, 115-116, 164-165.

— — — Correspondence with, on the Panopticon Penitentiary, xi. 116-118.

— — — casually noticed, iii. 119 n, 435; iv. 204, 206, 263; v. 268; viii. 469; x. 250, 362, 363, 373, 391-394; xi. 118, 124, 131, 135.

Roses—Wars of the—their effect on the liberties of Parliament, iii. 514.

Rosenkämpf—M. De—noticed, x. 406-407, 542-543.

Ross—Visit to, by Bentham in his youth, x. 46.

Rosslyn—Lord. See Wedderburn.

Rotation—Application of the principle of, to governing bodies, i. 572-573.

Rotten Boroughs—Note as to, in the Common-Place Book, x. 141.

Rousseau—Incident of his prosecution of Saurin, vii. 34.

— noticed or quoted, i. 182, 341, 431, 464; iv. 64; x. 443.

Rowing as a punishment, i. 438.

Royal assent to Bills—Formula of, ii. 373.

Royal Institution—Advantages of the, ii. 260.

— — — System of instruction in, compared with that of Chrestomathic school, vii. 21.

Ruggles—Mr. His Poor Law Projects noticed, viii. 367-368; xi. 103.

Rule—Meaning of a, in connexion with the word order, ix. 222-223.

— — — Definition and application of a, iii. 215. Wherein distinguished from a principle, ib.

Rule—Good and Bad—the elements of, considered in connexion with the Constitutional Code, ix. 46-64. Misrule, consisting of oppression and depredation, 46-47. Will have place in every government where the arrangements allow of a few consulting their own interest to the prejudice of the mass, 47. Therefore in all but democracies, ib. Elements of the power of government, are intimidation and remuneration, 47-48. In good rule, the smallest amount possible of both employed, 48. Power an element of reward as well as wealth, ib. Corruption and delusion, elements in bad government—not in good, ib. Governments divided into seven species - the monarchical, the aristocratic, the democratic, and the mixtures of these, 48-49. In a monarchical mixed government, perpetual desire corruptly to exercise patronage, ib. Outline of securities against this, ib. Problem—to leave the power of doing what is beneficial, and remove that of doing what is detrimental, ib. Doctrine of counterforces—Possibility of applying them even in absolute monarchies, 50. Susceptibility to the various sanctions, 51. Two kinds of responsibility spoken of—the one, real responsibility to the sanction; the other, the possession of wealth which may be taken from one, ib. Where there is the latter responsibility, however, the former is weakened, and the power of maleficence in reality raised, 51-52. Hence the weakness of responsibility in a monarchy, 52. To moral responsibility to the Public-opin-

ion Tribunal, all governments more or less responsible, 52-53. For bringing into action the force of the Public-opinion Tribunal, evidentiary and commutative matter requisite, 53. Efforts to suppress their production indicate maleficence, *ib.* Opponents of censure the protectors of misgovernment, *ib.* Cases in which defamation or disclosure really is mischievous, *ib.* In other cases, outcries against the licentiousness of the press, and attempts at suppression, predicate misgovernment, 43-54. The protection and redress which a free press gives to the feeble, 54-55. Means of keeping down the press—license and prosecution: former the more efficacious, 55. Effect of taxing is to supply only the kind of press which the rich use, *ib.* A restricted press favourable to the growth of defamation verbally, as it affords no means of answering, 55-56. Effect of restrictions in producing hatred against the government, 56. No presumption against a government that restricts the press is too severe, *ib.* Mischievousness of that arrogance of superior wisdom in rulers, which forbids criticism of their acts, 57. Especial mischievousness when mixed with fanaticism, *ib.* Inferences from indiscriminate suppression of false and true reports, 57-58. The necessity of there being coercive power in governments, and the mitigation of this against the security of the people, 58. The smaller it can be made, the better, *ib.* Badness of neighbouring governments has an evil influence, 58-59. Fictions of Law—inventions of misgovernment, 59. Tabular comparison of the elements of aptitude of good government, as compared with the Government of England, 59-60. Defence of the system, that it is the same it has always been, answered; the elements of power, and especially the army, increased, 60. When the evils exposed, recourse had to the boast of purity of motive, 60-61. The assertion its own contradiction, 61. Evil produced in fostering this spirit by laudatory Biographies, &c., 61-62. The labouring classes, who are the really beneficent, get none of the praise, 62. Looked at with disgust on account of their poverty, by those who are doing them injury, *ib.* Minimization of confidence in governors recommended, *ib.* Difficulty of balancing power, so as to leave what useful, and remove what maleficent, 62-63. United States an illustration, 63. Arrogation of purity of motive not necessary there, 63-64.

Rule to show cause—Motion for, vi. 477.

Rules—Fixed. The employment of, a protection in all exercises of power, i. 576.

Rules of prisons—reference to, i. 432.

-- of court—Plan for judge making, subject to disallowance by Crown or either House, iii. 367-371.

-- fixed and inflexible—Impropriety of, in judicature, ii. 31-32. Substitution to them, 32.

-- General, not applicable to probative force of circumstantial evidence, vi. 50-53.

-- unbending in evidence—Superiority of cautionary instructions to, vi. 151-152.

Rules of law founded on erroneous inferences from circumstantial evidence, vi. 53-57.

----- characterized as legislation by Judges, ii. 121.

----- fictitious law manufactured by Judges and reporters, iv. 484-486.

Rulers—Effect of giving to, greater legal securities than to individuals at large, ii. 121.

-- Manner in which oppression by, is met by the Public-opinion Tribunal, viii. 562.

Rumford—Count, noticed, viii. 426; x. 390.

Rymour—a ground of punishment in ecclesiastical practice, vi. 493-494.

Rush—Richard—Correspondence with, as to the existence of Label Law in the United States, x. 512-513.

----- Letter to, x. 533-534.

----- noticed, xi. 10.

Russell—Lord John—Vague expressions employed by, against Radical Reform, examined, iii. 600-602.

----- noticed, x. 594.

Russell—Lord William, noticed, vii. 413.

Russell's Forms of Process quoted, vii. 222-224.

Russia—Punishments by mutilation in, i. 417.

----- Servile punishments in, i. 439.

----- Ranks of nobility in, ix. 87.

----- Habits of the nobility of, x. 159.

----- Improvement of the nobility of, i. 569.

----- Reformation in Government of Provinces of, i. 571.

----- Correspondence with the Emperor of, on codification, iv. 514-528. Letter offering a code, 514-515. Answer, stating that the commission on the laws would take cognizance, 515. Present from the Emperor rejected, and why, 515-516 n. Reply, showing the hopelessness of good results from reference of the matter to the commission, 516-528.

----- Account of Bentham's residence in, x. 159-179.

----- State of the army of, x. 159-160.

----- Dinner parties in, x. 160.

----- The attempt to separate Denmark from, and create a war, in 1789, attacked in the Letters of Anti-Machiavel, x. 201-211.

----- Eligibility of, as an ally for Britain in the time of Catherine, x. 207-208.

----- Letter to Bentham, with remarks on the political position of, in 1794, x. 297-300.

Russia—Dumont's notes of his residence in, x. 405-410.

— Progress of Bentham's opinions in, x. 406-407, 408, 473, 478.

Rutland—Duke of—his pension to Jephson, ii. 384.

Ryder—Mr Secretary, noticed, x. 464; xi. 135.

S

Sabakin, a Russian merchant—Account of, x. 160.

Sabbath—Instruction that might be given on the, ii. 258.

— Abortive efforts to get convicts in New South Wales to keep the, iv. 224.

Sabloukoff—General—Letter from, hoping for a code for Russia, by Bentham, x. 412-413.

— Letter from, on Slavery in Russia, x. 420-421.

Sacrament. Instances of its being taken as a bond of union by assassins, vii. 422.

Sacred—Use made of the term, as distinguished from profane, i. 506.

Safe custody—Provision for, in proposed Dispatch Court, in. 382-388.

— Whether persons kept in, before trial, should be set to labour? iv. 59-60.

— with regard to evidence, vii. 175.

Safeguards against suspicious evidence, vi. 116-119; vii. 593-597. Declaration of credence from exhibitant, vi. 117-118. Code of instructions for weighing evidence, 118-119; vii. 563-598. (*See Instructions.*) Recordation of cases where inferior evidence received, vi. 119; vii. 595-597.

Sailors—might be trained under a system of Pauper management, viii. 421.

— Their practice of ingraming their name noticed, i. 567.

— The importance attached by, to the peculiar form of an oath, vi. 319.

Saints—Practice connected with the canonization of, ii. 220.

Saints' Days in Catholic countries—Idleness produced by, iii. 68.

St Albans—Case of. Constitutional question as to the power of the Crown, decided in, iv. 259-260, 268.

St Helens—Lord—Correspondence with Wilberforce and, as to the propriety of an embassy to France, consisting of persons whose opinions would not be inimical to the dominant party there, x. 315-320.

— Correspondence with, on the constitution of the Privy Council as a court of appeal, x. 430-431.

— Miscellaneous letters to, x. 261-262, 305-306, 362.

St Helens—Lord—Casual notices of, x. 184, 250, 358, 390, 399; xi. 74.

— Letter to, on the state of the negotiations as to the Panopticon Penitentiary, xi. 118-120.

St John—Goodyear—a college companion of Bentham, x. 41.

St Vincent—Lord—Mention of, xi. 120.

Salary—How far it may be made a guarantee against temptation, by its amount, i. 548-549; ii. 234.

— How far it is a reward for services, ii. 235-237. Extent of, does not increase zeal, 235-236. Reason—because it is not attached to each individual official act, 236-237.

— Payment by, inferior to the contract system, where the latter is practicable, iv. 129.

— Smallness of, conducive to aptitude, v. 271-272.

Salaries—Official—Rules as to, ii. 237-240.

— Should not consist of fees or perquisites, ii. 241.

— Should be the smallest that the service will be done for, ii. 241-242.

— Nominal, should not exceed real, ii. 242-243.

— Should be borne by those who have the benefit of the services, ii. 243-244.

— Should be calculated on a scale to exclude corruption, ii. 244-245.

— To members of Legislature, as a means of securing attendance, ii. 324-325.

— As an instrument of bribery, iii. 492.

— Means of abuse in connexion with, iv. 131 n.

— Extravagant: their tendency to render the recipients idle, iv. 374-375.

— of Police Magistrates—Observations on Peel's Bill for raising, v. 328-348. *See Magistrates.*

— means proposed for their full amount being made public, v. 385.

— The system of in the Constitutional Code, ix. 266-271.

Salas—Dr Ramon—Spanish translation of the Principles of Morals and Legislation by, xi. 20.

Salé—proper causes of invalidity in, i. 331-334.

— Deed of—Draft for a, v. 395.

— Deed of—Plans for brevity and precision in describing the subject in, v. 392.

— of justice, vi. 134.

— use of registration to the contract of, vi. 575.

— of offices, considered, ii. 247-248.

— of judicial offices to qualified persons, the money going to the public behoof—explained and defended, iv. 372-378. *See Pecuniary Competition.*

— of Public Offices—Letter on the advantage of, with reference to the appointment of a Secondary by the Common Council of London, xi. 31-32.

Salency—Institution of La Rosière de, ii. 231.

Salisbury—Marquis of, noticed, x. 250 ; xi. 101, 136, 137.

Salisbury—Richard Anthony—notice of, x. 285.

Salisbury—The case of, in relation to prison fees, with personal characteristics, v. 359-360.

Salubrity of places and of trades—use of registered statistics for throwing light on, ix. 627.

Sanatory regulations—use of registered statistics for, ix. 627.

— — Authority of the Health Minister in regard to, by the Constitutional Code, ix. 444-445.

— — Extract from the Examiner as to, ix. 648-649.

SANCTIONS—The four, as the sources of pleasure and pain, i. 14-15. The Physical, the Political, the Moral, and the Religious defined and distinguished, ib.; another division in a Letter by the author to Dumont, 14 n*. Etymology of the term sanction, 14 n†

— Origin of the theory of the, iii. 292.

— Division of—Uses made of, by the author as a logical arrangement, iii. 290-292.

— those which bind a witness to the observance of truth enumerated, vii. 569.

— The several species of, as the causes of trustworthiness in evidence, vi. 18-21, 260-261; vii. 394. The Physical, the Legal or Political, the Moral or Popular, and the Religious, defined and distinguished, ib.

Sanction—The Physical—Operation of, on trustworthiness of evidence, vi. 262-264. Love of ease, by avoidance of trouble of invention, tends to truth, 262. Application to the proverb, that children and fools speak truth, 263. The motive weak and easily counteracted, 264.

Sanction—The Moral or Popular—Punishments belonging to the, i. 453-458.

— — Operation of, on trustworthiness of evidence, vi. 264-268. Dependence of mankind on the exercise of veracity, 264. More especially in judicial questions, 265. Counteraction of the sanction in favour of evil, by inducements to conceal vice, ib. Classes having an interest separate from that of the rest of the community, prompting to falsehood, 265-267. Falsehoods that are supported by the sanction, 267-268.

Sanction—The Legal or Political—Punishments of, compared with those of the moral, i. 454-455.

— — — Operation of, on the trustworthiness of evidence, vi. 268-270. Applies where the moral sanction deficient—public offences, &c., 268. As a cause of

veracity, counteracted by the punishment of self-crimination, ib. Unfaithfulness to his trust of the administrator of this sanction, 269-270.

Sanction—The Religious—Operation of, on the trustworthiness of evidence, vi. 270-276. Propagator of a religion seeks to infuse veracity in followers, 270-271. In applying scripture to advanced states of civilisation, deficiencies filled up from the moral sanction—and any falsehoods that are now justified, so sanctioned, 271. Cases in which force of religious sanction has operated to produce perjury, ib. Peculiarities of the Mahomedan code, 271-272. Feebleness when not assisted by the legal and moral sanctions, 272. Illustrations of its inefficacy—solemn declarations on controverted points—unanimity of juries, and findings under the value of forty shillings—falsehoods in lawsuits—university oaths, 273-274. Ease with which this sanction counteracted by any other, 274-275. Uses to which it is peculiarly applicable, 275-276.

— — Arrangements for pointing the force of, in administering oaths, vi. 319.

Sanctuaries from arrest, considered, i. 431.

— — — a device of Technical procedure, v. 12.

Sand—Employment of, for writing on in schools, viii. 53.

Sanderson—Robert, Bishop of Lincoln—His explanation of the laws of the University of Oxford, ii. 261.

— — His Exposition of the Aristotelian Logic—criticised, as to the Definition: the Uses: the End: the Functions: the Object, matter, and subjects: the Predicaments, and the Post-Predicaments, viii. 232-236.

— — The definition of contradictoriness by, impugned, viii. 103-104 n.

— — His Logic suggested to the Author the system of Dichotomous division, viii. 110-112.

— — Character of his work on Logic, viii. 113.

— — His rules for logical division examined, viii. 113-114.

— — Use made of his Logic by the Author as a means of reference to the Aristotelian logic, viii. 217.

— — had correct notions of the nature of Definition, viii. 252.

— — His exposition of Logical division criticised, viii. 255-256.

— — Criticism on his exposition of the Laws of method, viii. 273-275.

— — Alteration of a reading in his Logic suggested, viii. 274.

Sandwich—Lord—His connexion with a negotiation between Lord North and the Rockinghams, x. 102-103.

- Sanguinary punishments—Effects of, i. 442-444.
- Santander—General—Account of, in a letter to Admiral Mordvinoff, xi. 33.
- — Document by which he re-introduced the study of Bentham's works in New Grenada, x. 553-554.
- Sardinian Code. Arrangement of The, iii. 163.
- — Incompleteness of the, iii. 206.
- Sarmiento—Senhor, a Portuguese deputy, noticed, x. 525.
- Sarpi—Paul, noticed, vi. 11.
- Sasines—Register of, in Scotland, vi. 579 n†.
- Satire—a protection to the public when honours are unworthily conferred, ix. 92.
- Satirists. The sentiment of benevolence weakened by, i. 562.
- Censure of the occupation of, ii. 255.
- Satisfaction for the loss caused by offences—Nature of, i. 371.
- — Reasons for the obligation to make, i. 371.
- — Six kinds of, distinguished, i. 371-372.
- — The quantity of, to be granted, i. 372.
- — Advantages of the certainty of, i. 372-373.
- — Pecuniary, examined, i. 373.
- — by restitution in kind, i. 374-375.
- — — — — A restitutive, as applicable to offences arising out of falsehood, &c., i. 375-376.
- — — — — Honorary, for insults, &c., i. 376-381. Extent of the evils that may be committed by the offence, 376-378. Nature and effect of duelling, 378-381.
- — — — — Proper system of, in case of offences against honour, i. 381-382.
- — — — — Vindictive, examined, i. 382-383.
- — — — — Substitutive, or at the expense of a third party, i. 383-386. Master and servant, 383-384. Guardian and ward, 385. Father for his children, ib. Mother for her children, 385-386. Husband for wife, 386. Innocent persons who may profit by offences, ib.
- — — — — Subsidiary, at the expense of the public treasure, i. 386-388.
- — — — — Relation of, to punishment, i. 394.
- — — — — as an element in the punishment of offences, iv. 199-201.
- Satisfactive remedies against offences—Nature of, i. 367.
- — Evils of their being administered by different tribunals, from those which administer the punitive, v. 531-532.
- Saurin—incident of Rousseau's prosecution of, vii. 34.
- Savages—The condition of, i. 307.
- The pursuits and amusements of, i. 540.
- Reason of the credulity of, vii. 92.
- Savigny—De, noticed, iv. 425.
- Savings Banks on the ordinary system. Defects of, viii. 410-414. Legislative amendments, 410 n.
- — Plan for, viii, 408-417. See Frugality Banks.
- Sawbridge—Alderman—his plans of Reform, iii. 517.
- Sax—Chevalier de—Notices of, in a Letter from Lord Wycombe, x. 311-312.
- Saxons—The Anglo. Inequality of the pecuniary punishments of, i. 399-400.
- Saxony—Security to Protestants in, ii. 417.
- Expense entailed on by its conversion into a kingdom, ix. 89.
- Say—J. B.—Information from, as to the attendance of Judges in France, ix. 652-653.
- — — Letters from, x. 485-486, 499-500, 504, 525-526.
- — — Letter to, xi. 2-3.
- — — noticed, x. 484.
- Scale of Ranks—The Empress Catherine's, discussed, ii. 194.
- of persuasion—an infinite one inapplicable, though the only true one, vi. 232-234.
- Decgrade, of persuasion, with reference to evidence, vi. 225.
- of trustworthiness, vi. 167-168.
- Scandal—Impediments to the liberty of the press give license for the propagation of, ix. 56.
- a designation of irrelevant evidence in equity, vii. 363, 365-366.
- See Reputation—Offences against.
- Scantiness as a defect in language considered, viii. 309.
- as a defect in literary composition, viii. 271-272.
- Scarlet—Sir James, (Lord Abinger,) noticed, iii. 376 ; iv. 447.
- Sceptre—competency of witness restored through the, vii. 435-436.
- Schedule—The use of, as a means of methodically describing subjects in deeds of sale, v. 392.
- Scholar-Jury principle, in the management of the Chrestomathic system of Instruction, viii. 49.
- Scholar-monitor principle, in the management of the Chrestomathic system of Instruction, viii. 47.
- *Scholar-teacher principle, or employment of the more advanced scholars as teachers of others—a principle of management in the Chrestomathic system of Instruction, viii. 46-47. Advantages—saves money, saves time, increases relative aptitude, and strengthens in the teacher his knowledge, ib.
- Scholar-tutor principle, or employing the advanced scholars as private tutors to the others—a principle of management in the Chrestomathic system of Instruction, viii. 47.

School—Court of justice considered as a, vi. 355-356, 365.

School of Legislation—how creatable by encouraging the public to make suggestions as to proposed legislation, and opening competition for drafts of codes, iv. 521-523.

School discipline—Employment of reward in, ii. 206.

School—The Chrestomathic—peculiar advantages of, viii. 11-16.

— Objections to the plan of, answered, viii. 16-21.

— Relation of, to the existing Universities and Schools, viii. 21-22.

— Obstacles and encouragements to, viii. 22-25.

— Order of priority of subjects in, viii. 25-28.

— Stages of instruction in, viii. 28-40.

— Branches of instruction excluded from, viii. 40-43.

— Intellectual exercises of, viii. 44-46.

— Principles of management of, viii. 46-54.

— Proposal for the establishment of, viii. 54-59.

Schools—As places for the promulgation of Laws, i. 158.

— Encouragement of emulation in, ii. 198.

— of vice—Prisons considered as, i. 429.

— The Panopticon system as applicable to, iv. 37-248.

— Application of the Panopticon Plan to: considerations as to the rigour of discipline it would occasion, and the facilities for experiments, iv. 62-66.

— Sunday—Adaptation of, to a Panopticon Penitentiary, iv. 161-162.

— Laws might be got by heart in, iv. 482.

— Oaths of Irish Bishops to erect, broken, v. 456.

— Popular—Advantages of, and groundless prejudices against, viii. 20.

— Public—Tyrannical and barbarous habits encouraged in, viii. 435-436 n.

— of Justice—How Juries may furnish, ii. 149-150.

Schoolmasters acting as notaries, vi. 530.

Schoolmen—Their mistake in supposing that ideas could be lodged in the mind otherwise than through individual objects, viii. 99 n.

Science—Fallacy of authority denied influence in, ii. 393.

— in contradistinction to art, predicates knowledge acquired by attention and exertion, viii. 27.

— Impediments to improvement in, in reverence for great names, viii. 177.

— Unapt phraseology kept up in, by the experienced, who are familiar with it, to the prejudice of learners, whom it impedes, viii. 182.

Science—Unapt nomenclature preserved in, from the unwillingness of adepts to give up what is obscure and imposing to the uninitiated, viii. 183-184.

— Inaccurate conclusions in, from want of knowledge of all the causes at work, and the promotive or obstructive circumstances, viii. 209.

— Advantage of nomenclature to, vi. 442.

— Cause of advancement of, vi. 226.

— Questions in, are questions of evidence, vi. 208-209.

— Wisdom of our ancestors not appealed to in, ii. 401.

Sciences—Provision for the cultivation of the, i. 317-318.

— Invention in, with mementos as to the impediments likely to interfere, viii. 275-279. *See* Invention.

— those involving the predicaments of Place, Motion, Time, Number, Figure, and Quantity, viii. 286-288.

Science and Art—Reward applied to, ii. 252-260. *See* Art.

— Abortive efforts to draw line of distinction between, viii. 26-27, 240-241.

— Specimen of a new Encyclopedical Sketch of, with a diagram, viii. 82-95. *See* Encyclopedical.

— Essay on nomenclature and classification in, viii. 63-128. *See* Nomenclature.

— The false notion that they are different not only in degree, but in kind, from the common objects of human pursuit, viii. 239-241.

— Analysis of the field of, viii. 282-289. *See* Arts.

Scientific evidence, vi. 214.

— Nature of, and relation of scale of probative force to, vi. 229.

— Difference between Roman and English law as to, vi. 229.

Scientific language—Improvements in, vi. 226-227 n.

Scientific opinion—The authority of, ii. 380-389.

Scio visited by Bentham on his way to Russia, x. 151.

Scipio—Anecdote of, ii. 210 n.

— his method of evading pecuniary inquiry, iv. 130 n.

Scopic—The use of, as a termination in Encyclopedical nomenclature, viii. 83 n.

Scotch Reform, &c.—Letters to Lord Grenville on the proposed Reform in the administration of justice in Scotland, v. 1-53. *See* Session—Court of.

Scotland—The law of, inimical to fictions, i. 254-255; v. 92; vii. 337 n, 419.

— Nature and character of the provision for the poor in, i. 315, 544.

— Law of divorce in, i. 355.

— Law of marriage in, i. 357; vii. 580.

— Clergy of, characterized, i. 544.

- Scotland—Registration system in, i. 552.
- Verdicts of juries given by majority in, ii. 128.
 - The proposal to extend the system of special pleading, as practised in England, to, criticised, ii. 174.
 - Jury Court in, alluded to, ii. 174.
 - Churches and Universities of—Salaries in, compared with those in England, ii. 216.
 - Practice as to Lords of the Articles in, ii. 351 n.
 - Union of, with England, considered in connexion with Irrevocable laws, ii. 405-407.
 - Alterations on the judicature of, considered in connexion with the Union, ii. 406-407.
 - Non-existence of bishops in, ii. 449.
 - Injustice to, in respect of amount of representation, iii. 584 n.
 - Law of—Confusion in colonial and other administration by overlooking the existence of, iv. 264 n.
 - System of procedure in, Judge-made, v. 5.
 - Proposed Reforms in—Summary of opinions on, v. 14. Division of Court, ib. Jury Trial, ib. Appeals, ib.
 - not afflicted by the distinction between law and equity, v. 41.
 - Law Reform in—Resistance of Commissioners of Inquiry to, v. 154.
 - State of the Jury system in, v. 175. Alterations since the author wrote, ib. n.
 - Notaries-Public of, disadvantageously compared with those of France, v. 408.
 - No Bankruptcy Court in, v. 607.
 - Absence of separate equity judicature in, vii. 302.
 - Cessio bonorum in, vi. 181-182.
 - Clergymen acting as notaries in, vi. 530 n.
 - Delays in the procedure in, vii. 221-224. See Session—Court of.
 - Female witnesses once excluded by the Law of, vi. 116.
 - Forms of notice or citation in, vii. 253.
 - Holograph deeds in, vi. 515 n.
 - Increase of jurisdiction of sheriffs in, vii. 234 n *.
 - Law of, as to authentication of writs, vi. 122 n †.
 - Law of deathbed wills in, vi. 531 n.
 - Local courts of, vii. 224, 598.
 - Manner of swearing witnesses in, vii. 423-424.
 - *Meditatio fugæ* warrants in, vi. 334 n.
 - Nullity of informal deeds in, vi. 517 n.
 - Practice as to pleading guilty in, vi. 473 n *.
 - Purging a witness of partial counsel in, vii. 440.
 - Registration of contracts in, vi. 575 n, 579 n †, 581 n.
- Vol. XI.

- Scotland—Rejection of tendered testimony in, vii. 395-396.
- Repetition of evidence in, vi. 451-452.
 - Witnesses kept apart from each other in, vi. 362 n *.
 - illustrative of the safety of popular education, viii. 20.
 - Labourers' wages in, compared with those of England, viii. 408 n.
 - Taxes on Justice in, ix. 523-524.
 - Letter from Sir Samuel Romilly on the state of the Judicial system in, and on proposed Reforms, x. 421-422.
 - Letter to Romilly on Law Reform in, x. 423-425. Incompatibility of ingrafting Bentham's larger plans of Reform with those sanctioned by Lord Grenville and Lord Henry Petty, 423-424. Principles—single-seated judicature—judge to give an opinion with his decision—appeal not to stop execution, 424. Preparation of a work on the subject, 424-425.
 - The great number of appeals in, ix. 469 n.
 - The fisheries of—Letter to Dr Anderson on his schemes regarding, x. 127-129.
 - Inquiry as to the number of convictions for crime in, as compared with England, x. 129-131.
 - Proposal to prepare a code for—Letter from Romilly on, x. 432.
 - Articles of Faith of the clergy of, x. 473.
- Scotsman newspaper—Notice of the, x. 577.
- Scotsmen—The decision as to their right to the privileges of Englishmen, iv. 267.
- Scott—Sir Walter, noticed, v. 154 ; x. 536-571.
- Scribe. See Writer.
- Script—how far should be consultable by witness, vi. 386-392. See Notes.
- Litigant founding on, should declare his credence in, vi. 117-118.
 - Cases in and conditions on which transcript of should be received, vii. 143-149. See Transcript.
 - Authentication and De-authentication of, vi. 119-128. See Authentication.
 - Scription. See Writing.
- Scripture—Sacred—how far affording a rule of action, i. 10-11.
- authorities cited from, against the practice of judicial oaths, v. 219-220.
 - — Repugnance of judicial oaths to, urged in Petition for justice, v. 458.
 - — Evidence for, transmitted evidence, vii. 158 n.
 - — not to be part of the Chrestomathic system of Education, as it might exclude some persuasions, viii. 40-42.
- Scrivener's Company—Bentham's Reminiscences of the, x. 34.
- Scrutinized evidence compared with unscrutinized, vi. 169.

Scrutiny of conduct of officials--Utility of keeping up the practice of, ii. 426.
 — Effect of, on testimony, vi. 173.
 Sculptor—How far imagination necessary to, viii. 76.
 Sea—The. Liberty of fishing in, should be unlimited, i. 329.
 — — in what respects the subject of laws, iii. 201.
 — — Arrogation of dominion over by Britain animadverted on, iii. 584 n.
 Sea-Defensive Force—Elements of as distinguished from the Land, ix. 333-336.
 — — Provision for in the Constitutional Code, ix. 402-415. *See* Defensive Force.
 Seal—what kind of will restore competency of witness, vii. 435, 438-439.
 Sealing deeds in England--Inconsistency of the rules as to, vi. 516 n *. *See* Sigillation.
 Seaman's Code—Plan for giving copy of a, to each registered mariner, ix. 412.
 Seamen—Merchant—Register of. Advantages of, both to the Public and to the Seamen, ix. 406.
 — — Plan for obviating oppression of, by a system of registration, and summary adjudication on complaints—in the Constitutional Code, ix. 409-415. *See* Defensive Force—Ship-board oppression obviated.
 Search—Things as to which, and objects for which, it may be judicially authorized, ii. 116.
 Seat—Proper, of punishment, i. 475-490.
 Seats in the House of Commons—Purchase of, considered, iii. 485-487.
 — — Interest of the Tories and Whigs in regard to, as affecting Reform, iii. 523-529.
 — — Method of vacation of, by Radical Reform Bill, iii. 589-591.
 — — Compensation for the loss of, by reform, iii. 533.
 Seclusion—How far justifiable, to keep accused person or witness from intercourse or tampering, vi. 450-451. *See* Publicity and Secrecy.
 Secondary mischiefs distinguished from primary, i. 69.
 Secondary of the city of London—Proposal to apply the principle of pecuniary competition to the election to the office of, xi. 31-32.
 — — Corruption in the office of, v. 497.
 Second-hand evidence preferred in English practice to direct, vi. 108-109.
 Secrecy—Cases to which it should apply in courts of justice, iv. 301-302, 317.
 — Abolition of, in the Foreign department urged, ii. 554-560. Admits facilities for war, 554-556. Where the strongest checks on ministers are needful, there are the fewest, 556. Strength of Britain renders

secrecy peculiarly inapplicable, 556-557. Use of conquests only to despots, 557. Their uselessness to the British people, ib. Absurdity of attempts to improve trade by war, 557-558. Use of secrecy to nourish petty vanity and importance, 558. Popularity of war, 559. Vulgar error that successful war enriches, ib. Idea that it adds to respect, ib. Use of the terms splendour, glory, &c., 559-560.
 Secrecy in matters of Government—Necessity of adopting, unless where there is absolute publicity, i. 575.
 — Departments and operations of the Government in which it is sanctioned by the Constitutional Code, ix. 210-212.
 — Arrangements for securing, in communications to Government functionaries, where necessary, ix. 329-330.
 — Cases in which it may be sanctioned in information to public officials, and the reasons, ix. 330.
 — inapplicable to the proceedings of representatives, iii. 487-490.
 — in the deliberations of legislative assemblies, considered, with relation to the French Chamber of Peers, ii. 317 n.
 — as evidence of delinquency, vii. 47-48.
 — Extent to which compatible with registration of contracts, vi. 580-581.
 — of the Roman system of examination considered, vii. 533, 540-542. *See* Privacy.
 — when justifiable in procedure, ii. 44.
 — whether obtainable in votes of juries ? ii. 132.
 — of accusation—Prejudice against, from its being employed to hide bad laws, iv. 399.
 — of imprisonment—how far safe, iv. 23.
 Secrecy of suffrage—Protective effect of, in 453-454.
 — — Reasons for, detailed, iii. 487-490.
See Ballot.
 — — Plan for, in Reform Catechism, iii. 540.
 — — Abridged statement of the arguments for, ix. 109.
 Secret informations—Recourse to, recommended, i. 573-574.
 Secret intercourse—Method of obviating, in the tribunals projected in the Constitutional Code, ix. 494.
 Secret register, in which reasons for taking or refusing objectionable testimony entered, vi. 97 n *.
 Secret societies—The causes that give rise to, ii. 292.
 Secret service-money—Dangerous influence of remuneration granted out of, v. 287-290.
 Secret voting—A plan for, applicable to a board or other small body, ix. 274-275.
 — — In elections and in legislative bodies, compared, ii. 368-370.

Secrets in trade—Whether the divulgence of, should be required from a witness, vii. 347.

— State—how far they justify restriction of judicial publicity, ii. 44 ; vi. 368.

— State—should not be extortable in evidence, vii. 348.

Secretary of State—Patronage in the hands of, subject to the influence of public opinion, v. 345.

Secretary of bankrupts by the Bankruptcy Court Bill—Functions of, inquired into, v. 566, 572-573.

Sections in statutes—Longwindedness of, iii. 248.

— — — Want of numerical reference from one to another, iii. 250-251.

— — — The breaking down of, into parts, recommended, iii. 264-265.

Security—External. Offences against, i. 101-103.

— the principal object of the civil law, i. 302-303, 307-308.

— Relation of, to the other objects of the civil law, i. 302-303.

— and equality—Opposition of, i. 311-312.

— and equality—Means of reconciliation of, i. 312-313.

— Examples of attacks upon, i. 318-321.

— Sacrifices of to security—viz., by exactions in the way of Taxation, i. 313.

— The certainty of satisfaction for loss through offences, essential to, i. 372.

— The principle of restitution in kind necessary to, i. 374.

— as an end of the Constitutional Code, ii. 269-271. Against calamity and hostility, ib. Hostility, either from open enemies, or internally from officials, ii. 270-271.

— Criticism on the declaration of imprescriptible right of, in the first French Declaration of Rights, ii. 503-504.

— As one of the rights of man—Clause as to in the second French Declaration, criticised, ii. 524-526.

— and Freedom—All that industry requires of the Government, iii. 35.

— Instruments of enjoyment constitute to a nation, as a fund convertible to defence, iii. 37 n.†.

— Commercial addition to, in the project of Annuity notes, iii. 133-136.

— External—Offences against—their position in the penal code, iii. 169.

— Universal—Maximization of, as an end of the law, iii. 211-213.

— of the person—Axioms of mental pathology applicable to, iii. 225-227.

— As an end of the distributive branch of the law, iii. 293-294.

— Instruments of, in regard to evidence, vi. 22.

— As an object of the civil or distributive law, ix. 11-13. Applies to person, reputa-

tion, property, and condition in life, 11. Opponents—Foreign adversaries, rulers, and fellow-citizens, ib. The last the object of the civil law, ib. Acts against security termed offences, 12. Penal code the means of enforcing the directions of the Civil, 12-13.

Security to governors, and security to governed—Conflict between, and difficulty of reconciling, ix. 58.

— Internal and external, as one of the principal ends, of a defensive force, ix. 338.

Security (or Bondsmanship)—Judicial: proposals for giving all practical extent to—forms in which it may exist, and cases in which employed, v. 501-502.

— — Reasons for requiring from persons convicted of corporal injury, i. 167.

— — for good conduct, in connexion with Penal law, i. 519-520.

— — Methods of communication, for the purpose of obtaining, ii. 79.

— — or friendly bondsman, in Principles of procedure, ii. 103-105.

— — to Defendant against oppression by Pursuer, ii. 105-110. *See* Counter-security.

Securities for appropriate aptitude in the members of a Legislature, as embodied in the Constitutional Code, ix. 191-198.

— for the appropriate aptitude of ministers, by the Constitutional Code, ix. 316-324. *See* Ministers collectively.

— for trustworthiness of evidence. *See* Trustworthiness.

— Makeshift evidence deficient in, for trustworthiness, vii. 118.

— False, for the trustworthiness of evidence—viz. oaths, exclusions, &c., vi. 28.

Securities against Misrule, adapted to a Mahomedan state, and prepared with particular reference to Tripoli, viii. 555-600.

— — — Note by Editor to, viii. 555.

— — — The term *securities* preferable from its clearness, to the word *rights*, or others generally used for the like purposes, viii. 557-558.

— — — against vexation on account of religion, viii. 583-584. Perfect liberty of opinion and worship—with protection to the predominant religion against the offensive public use of others, ib.

— — — against national gagging, by appeal to Public-opinion and the law, viii. 584-585. Freedom to express opinion when no personal injury occasioned in doing so, 584. Accusation justified by its truth, ib. Liberty of convocation, where not productive of disturbance or injury, ib. Acts of power contrary to this liberty, in obstructions, forcible dispersals, seizing papers, &c., illegal, 584-585. Sanction, in such case, to meet force by force, 585.

— — — against national disarmament

and debilitation, viii. 585-586. Sanction to carry arms, with counter security, to prohibit armed assemblies after notice, ib. Securities for a Mahomedan state,—in favour of individuals—General declaratory view of, viii. 586. Enumerated acts against person and property, which are only to be done as declared by law, ib.

— — — — against secret confinement, or other oppression of the person, viii. 586-587. Intimation and publicity of commitment, 586. Registry of prisons, ib. Succeedaneous provisions for temporary prisons, 586-587. Punishment for illegal imprisonment, 586. Means of discovery of persons imprisoned, ib.

— — — — against injurious banishment, viii. 587-588. Whether by force, fraud, or intimidation, 587. Intimation and publicity, ib. Punishment of contravention, 587-588. Considerations as to whether preventive measures, as by registration, will suffice, 588.

— — — — against secret and unlawful homicide, viii. 583-589. Official notice of every death, 588. Arrangements for inquiry when human agency suspected, ib. Arrangements for a full and fair examination, 588-589.

— — — — applicable to the case of mysterious disappearance, viii. 589-590. Official notification and registration, ib.

— — — — against extortion of personal service, viii. 590. Not to be exacted by any official person, or other, without a written acknowledgment, ib. Particulars of the document, ib. Occasions justificative of exaction of service—Prevention of calamities, &c., ib.

— — — — against official depredation, viii. 591-592. Force, intimidation, or deceit, 591. Imposition of secrecy is evidence of depredation, ib. Receipt by an official, of remuneration for service which he is not entitled to, ib. Precautions against fraudulent use of the sovereign's name, ib. Form of receipt for emoluments, 591-592.

— — — — Securities in favour of private writings against seizure, injury, inspection, &c., viii. 592. Judicial authority, ib. Precautions against wanton judicial application for malicious ends, &c., ib.

— — — — Chances of success to any project for, viii. 592-600. Utmost that can be obtained from the sovereign resolves itself into promises, 592-593. Advantage to the people, that any breach is palpable, and public opinion may bear on it, 593. The advantage of a wrong being seen to be distinctly unlawful, ib. Witness Magna Charta, Bill of Rights, and French Charter, 593-594. Inducements to sovereign's acceptance, in the checks not being

directly on himself, but on officials, 594. Counteraction in the unwillingness of a sovereign to undergo control, 595. Inducement to consent in the greater ultimate personal security, 596. Increase of reputation, ib. Improvement in the value of his property, 596-597. Inducements arising from domestic relations, 597. Opulence of the sovereign dependent on that of his subjects, ib. Increase of security will bring increase of capital, 597-598. Individual and public employment of capital, 598. Improvement of the land, 598-599. Mines and the precious metals, 599-600. Manufactures, ib. Means of communication and other public works, ib. Fame of the improvements would bring travellers and capital to the state, 600.

Sedative Function—Judges', in the Constitutional Code, ix. 486-487.

Sedentary occupations—their tendency to limit the disposition and power to commit acts of violence, iv. 143.

Sederunt—Acts of, in Scotland, a means of Judicial legislation, v. 7.

Sedition—Law of, considered in Letters to the Spanish people on the liberty of the Press, ii. 275-297.

— Criticism on the law of, with reference to the indictment in *Rex v. Edmonds*, v. 241-251.

— Criticism in the law of, with reference to the indictment in *Rex v. Wolseley, &c.*, v. 255-261.

— Law of, in the United States, v. 246.

— The absence of any distinct definition of, either in common or statute law, v. 260-261.

Seditious disposition—Jury charged by indictment to find, as if it were an offence, v. 256.

Seditious Libel—a creature of monarchy—does not exist in a representative democracy, ix. 38. See *Libel Law*.

Seditious Meetings' Act—The, ii. 295.

Seditious Writings—Laws for the destruction of, noticed, i. 535. See *Libel*.

Sedley—Sir Charles—Prosecution of, noticed, ii. 385.

Seducing motives distinguished from tutelary, i. 65.

Seduction—nature of the offence, i. 118-119.

— Compensation for, according to English law, i. 373.

— Inefficient punishment of, in England, vii. 35 n.

— Place of, in the Penal Code, iii. 165.

— Political means and instruments of, in elections, examined, iii. 476-482.

Segur—Count, noticed, x. 264.

Selby—The name of a schoolfellow of Bentham, x. 30.

Selby Case—The, noticed, ii. 591.

Selden—Anecdote by, as to outlawing the King of Spain, i. 513 n *.

— noticed, i. 149-150 n, 239 n.

Selenic—or simply mechanical source of motion, from gravitation towards the moon, viii. 132.

Self-acting laws, ii. 199-200.

Self-assumed authority—The fallacy of, ii. 411-412.

Self-contradictory assertions—more readily believed than simply incredible ones, vii. 111.

Self-criminative testimony—Causes of exclusion of, vii. 449-451. The interest of criminals, 449. Political partisans protecting each other, 450. Corresponding interest of lawyers, 451.

— — — Pretences for the exclusion of, vii. 451-458. Cruelty of making a man convict himself, 451-454. Fox-hunter's reason—fairness, 454. Reference to unpopular institutions—Inquisition, Star-chamber, and High Commission, 455-458.

— — — History of the rule excluding, vii. 458-463. Checking investigation in ecclesiastical courts, 458. A contrary practice once in use, 459-460. Instance of examination of defendant, 461-462. Considerations as to the history of the punishment of perjury, 462-463.

— — — Exclusion of, when the criminality is distinct from the cause in hand, vii. 466-468. The exclusion more pernicious in this case than others, ib.

Self-defence as an extenuation of injury, i. 166-168.

— and punishment—Relation between, i. 392-393.

— Employment of fallacies in, against counter-fallacies, ii. 479-480. Should be preceded by reasons, and accompanied by an acknowledgment of their fallacy, ib.

— Mendacity allowed to criminals on the principle of, vi. 472.

Self-denying ordinance—The, was the exclusion of placemen from Parliament, iii. 531.

Self-discrediting testimony—Exclusion of considered, vii. 465-466.

Self-disserving testimony—Exclusion of considered, vii. 445-472 ; —

— — — Uses of, and mischiefs from exclusion, vii. 445-449. Foundation in the unmeaning maxim that no one is bound to accuse himself, 445-446. Constitutes the most effectual evidence, 446. The rejection compels recourse to worse evidence, and the consequent chance of injustice, ib. Saving delay, vexation, and expense, 447-448. Exclusion taken advantage of invariably by the dishonest, 448. Teaches the people that they have to look for protection to mendacity, 448-449. *See* Self-criminative ; Self-onerative.

Self-disserving testimony—Inconsistencies of English law with regard to, vii. 468-472. Admission of casual notes and hearsay evidence, 468-469. Examinations before justices, 469. Motion for an information, 470. Motion causes, 470-471. Interrogatories by the master, 471. Affidavits on bringing up for judgment, ib. Bill in equity, 471-472.

Self-inculpativ testimony as evidence of delinquency, vii. 29-45 ; —

— — — confession and confessorial evidence defined and distinguished, vii. 29-32. Confession is complete and direct evidence—confessorial requires inference, 30. Should not be considered as amounting to confession, without interrogation, 31. Consideration as to whether, to be considered a confession, it should not be plenary, or as particular as would be requisite for conviction if it came from an extraneous witness, 31-32.

— — — extrajudicially delivered, vii. 32-36. The various species, with their causes of transpiration—Conspiratorial, Confidential, Jactitential, Unadvisedly colloquial, Unadvisedly exculpativ, Penitential, Superior-benefit-seeking, 32-33. Infirmative considerations—misinterpretation, 33-34 ; incompleteness, 34 ; mendacity, or false statement of guilt, 34-35. Distinction between designed and undesigned, 35-36.

— — — judicially delivered, vii. 36-38. Unadvisedly self-exculpativ, and penitential, 36. Motives for confession considered, 37. Ways in which confession may be false, ib. Witchcraft, ib. Should be circumstantial, and particular as to time and place, 37-38.

— — — extracted by interrogation, vii. 39-44. The subject in general—delinquent's efforts to save himself, tend to elucidation of his guilt, 39-40. Difference in point of effect between extrajudicial and judicial, 41-44. Advantage of having both united, 43. Rejection of this species of evidence in England, animadverted on, 43-44.

— — — impropriety of the exclusion of, vi. 106-109. *See* Self-criminative ; Self-disserving.

— — — rejection of, tends to accumulate irrelevant evidence, vii. 364.

— — — exclusion of, an admission of the injustice of the Penal law, vii. 348-349.

— — — strength of, vi. 404.

Self-notificative Information—Extraction of, from litigant, ii. 43.

Self-onerative testimony—exclusion of, considered, vii. 463. Has less claim for exemption than self-criminative, ib.

Self-preference, or self-regarding interest —

- the great ruling principle of human action, ix. 5.
- Self-preference—The author's discovery of the rule of, x. 80-81.
- — See Interest—Self-regarding.
- Self-preservation—as designative of a motive, i. 54, 56, 393.
- — an occasional tutelary motive, i. 66.
- — as a ground of extenuation, i. 79.
- — Extent to which it justifies the infliction of evil, i. 82-83.
- — and punishment—Relation between, i. 393.
- — Effect of, on testimony, vi. 155.
- — an illustration of the effect of motives on evidence, vi. 259.
- Self-regard—The primary feeling, and the foundation of sympathy, ix. 192.
- — of individuals—Effect of, on Government, ii. 120.
- Self-regarding affection—Necessity of, to man, x. 510.
- Self-regarding motives—A class styled, i. 56, 58-59.
- — — their effect in connexion with the tendency of an act, i. 61.
- Self-regarding interest. See Interest.
- Self-regarding offences defined and distinguished, i. 98, 100-101.
- — — Genera of, as corresponding with those of private offences, i. 115 n †, 116 n *, 118 n †, 119 n *, n §, 131 n *.
- — — Characters of, i. 140-141.
- — — Considerations as to time and place, with respect to, i. 175.
- — — Subdivision of, iii. 167-168.
- — — Characters of, with reference to classification, iii. 173.
- Self-regarding pleasures and pains, i. 20-21.
- — — — with the corresponding interest and motives, i. 205.
- Self-service principle in schools—a principle of management in the Chrestomathic system, viii. 51.
- Self-suppletive function of the members of the Legislature by the Constitutional Code, ix. 167-170. See Legislature.
- — — of the Prime Minister, according to the Constitutional Code, ix. 207.
- — — of Ministers collectively according to the Constitutional Code, ix. 231-232.
- — — Judge's, according to the Constitutional Code, ix. 483-486.
- Self-trumpeter's fallacy—The, ii. 412.
- Selkirk—Lord. Allusion to his removal of tenantry, v. 44-45.
- — — noticed, x. 484.
- Sellis—Dr—a college friend of Bentham's, x. 40.
- Semi-public offences distinguished from the other classes, i. 97-98.
- — — Divided into those operating through calamity, and those through delinquency, i. 100.
- Semi-public offences—Genera of, as corresponding with those of private offences, i. 115 n †, 116 n *, 118 n †, 119 n *, n §.
- — — Characters of, i. 140; iii. 173.
- — — Considerations regarding time and place, with regard to, i. 174-175.
- — — Subdivisions of, iii. 168-169.
- Senate of United States—has created prejudices in favour of second Legislative Chambers, iv. 447-448.
- Senates and Houses of Peers—Address to citizens of France against, iv. 49-460.
- See Lords: Peers.
- Sensation—The philosophy of, represented by Pathoscopic Pneumatology in the Encyclopedical Sketch of Art and Science, viii. 88.
- Sense—The pleasures of, enumerated, i. 17-18.
- Pleasures and Pains of, with the corresponding interest and motives, i. 198.
- Organs of. Connexion between impression on, and judgment performed in consequence, vi. 250.
- Common. Use made of the term, i. 8 n.
- Moral. Use made of the term, i. 8 n.
- Common and moral. Dispute between the respective partisans of, vi. 239.
- Senses. Ideas derived from the operation of objects on the, i. 99 n.
- The pains of the, i. 19.
- Motives corresponding to the pleasures of, i. 59-60.
- Immaterial ideas necessarily put in the language applied to the objects of, viii. 327-329.
- Evidence presented to, the only kind that cannot lie, vii. 73-74.
- The dispute as to whether they are capable of being deceived, vi. 250-251.
- Sensibility—Circumstances influencing, i. 21-35. Amount of pain or pleasure from given cause dependent on sensibility, 21. Bias of sensibility, ib. Exciting causes, 22. The circumstances enumerated, ib. Health, 22-23. Strength, 23. Hardiness, ib. Deformity, ib. Knowledge, ib. Intellectual power, 23-24. Firmness, 24. Steadiness, ib. Bent of inclinations, ib. Moral and religious bias and sensibility, ib. Sympathetic and antipathetic sensibility and bias, 24-25. Insanity, 25. Habitual occupation, ib. Pecuniary circumstances, 25-26. Connexions in, the way of support, burden, sympathy, and antipathy, 25-27. Bodily temperament, 27. Mental temperament, ib. Radical frame of body and mind, and effect of incidents, ib. How far bodily emotions may be indicative of mental state, 27-28. Sex, 28. Age, 28-29. Rank, 29. Education, ib. Climate and nature of the country, 29-

- 30 and n. Race or lineage, 30. Government, *ib.* Religious profession, 30-31. How far the influencing circumstances can be calculated on in legislation and judicature, 31. Exciting causes to which they apply, 32. Analytical view, 32-33. Dumont's explanation of the uses of these observations, 33-35.
- Sensibility—Circumstances influencing, to be kept in view in transplanting laws, i. 172-173.
- Circumstances influencing, to be considered in measuring punishments, i. 401.
 - Punishments of the moral sanction dependent on extent of, i. 457.
 - How far the external manifestations of, indicative of feeling, i. 27-28.
 - to motives—Effect of, on evidence, vii. 395.
- Sensible objects defined, viii. 44.
- Sensuality—Intellectual instruction a security against the effects of, viii. 9-10.
- luxury, &c., as motives, i. 198.
- Sentence—Difference between, and proposition, viii. 187.
- Every one is either a proposition, or a combination of propositions, viii. 333.
- Sentences—Necessity for clearness and brevity of, in laws, iii. 208.
- Illustrations of length and confusion in, in English statutes, iii. 248-249.
 - Long. The influence of, on the state of the mind in their perusal, v. 392, 393-394.
 - Importance of distinctness in the structure and limitation of, vi. 461.
 - Method of producing clearness in, viii. 242-253. *See* Exposition.
- Separation of the sexes—Provisions for, in Panopticon system, iv. 134-137.
- of paupers—Purposes for which necessary, and means of attaining with relation to them, viii. 372-373.
 - into classes in Penitentiaries—Conduciveness of, to reformation, i. 499-500.
- Separatists—Law exempting them from oaths, vi. 381 note 6.
- Sepoys—Amelioration of the condition of, through the operation of military discipline, ix. 418.
- High feeling among, as soldiers, ix. 421-422.
- Septennial act—Circumstances of the passing of the, iii. 546.
- Sepulveda—Senhor, a Portuguese deputy, noticed, x. 525.
- Sequences of facts—Evidence from, vii. 62-64.
- Sequestrator in Chancery—Origin and functions of the, iii. 350-351 n.
- in Chancery—Complexity of the practice of, iii. 352 n.
 - Provisional, as remedy against the effects of judicial delay, vii. 380-383.
- Sergeant-at-arms—Origin and functions of the, iii. 350 n.
- Sergeants at Law—Origin of the functions of, ii. 152.
- Servant—Rights and obligations attached to the condition of, i. 343.
- Offences which may be committed against, with reference to his condition, i. 123-124.
 - Responsibility of master for, in relation to satisfaction for offences, i. 383-385.
 - and master—Effect of connexion between, on evidence, vi. 160; vii. 576.
- Servants—Swift's directions to, noticed, ii. 383.
- Position of, adduced as controverting the maxim, that all are born equal, ii. 499.
 - Intercourse with, deleterious to the minds of children, viii. 12.
 - Domestic. Plan for boarding the children of, in industry-houses, viii. 423.
- Service—Reasons against increase of remuneration for length of, ix. 295-296.
- Personal—Sieyes' views regarding, considered, ii. 531-532.
 - Personal. Securities against the illegal extortion of, adapted to a Mahomedan state, viii. 590.
 - of notice—abuses as to, vii. 249-255.
- Service Books for registration of official operations, in Constitutional Code, described, ix. 234.
- Uses of, ix. 235.
- Services as the converse of obligations, iii. 180-181.
- Analysis of the kinds of, ix. 22. *See* Burthens.
 - Preparatives and inducements to the performance of, ii. 233-235.
 - Exemption from, as a reward, ii. 196.
 - as a general title of the civil code—Division of, iii. 179-180. First division, according to the active or passive faculties which give birth to them, 179. Second—according to the subject—persons or things, *ib.* Third—corporal and mental, 179-180. Fourth—the party, or number of parties employed, 180. Fifth—services arising out of established rights, *ib.* Table of the division, *ib.*
 - Rights respecting, i. 338-341. Means of acquiring, 338-339. Superior need, (*i. e.* lightness of the burden in comparison with its importance to the recipient,) 339-340. Claim created by services previously performed, 340. Contract, 340-341.
 - Laws concerning—their relation to those concerning offences, rights, and obligations, iii. 158-160.
 - Considerations as to how far they may be remunerated by honours, ix. 90-91.
 - Gratuitous—Propriety of the public receiving, from eleemosynary advocates, Judges Depute, &c., iii. 342-344.

Services — Gratuitous — Burke's opinions against, controverted, v. 294-297.

Services — Judicial — nature of, ii. 33.

— — Examination of applicant for, ii. 37-38.

— — Warning against excess in quantity of, being demanded by litigants, ii. 71.

Services — Public — Divided into ordinary and extraordinary; and the former into routine and occasional, ii. 193.

— — Pecuniary and honorary rewards for, ii. 216-219.

— — Influence of an aristocracy on the fund for rewarding, ii. 201.

— — Burke's estimate of the extent of remuneration for, controverted, v. 292-294.

Servility — nature of, i. 50.

— Intellectual — An impediment to the progress of invention, viii. 276.

— — slavishness, sycophantism, obsequiousness, &c., as designative of motives, i. 200.

Servitudes — Expediency of, as a branch of law, i. 342.

— Classification of, iii. 184.

Session — Court of, in Scotland — Proposed division of, into Chambers, considered, v. 16-27. The resolutions of the House of Lords on the subject, 16. Benefits — dispatch, 16-17. Economy, 17. Competition, ib. Advantage of single-seated judges, 17-18. Exemplification in sheriffs, 18. Numerousness of Court of Session copied from France, 19. Bodies of judges require high paid presidents, ib. Chief reason for keeping up numerously-seated courts — a large stock of learned materials to be disposed of, 20. Unwillingness of judges of Inner-house to act as judges of first instance, 21. The natural system of judicature that would be established would be the resort of honest men, while the present system is the resort of knaves, 22. Difficulty, however, of getting the technically educated to adopt the new course, 23. Approbation of the Small Debt Courts by Scottish authorities, 24-27.

— — Proposed alteration of system of pleading in, v. 27-29. Danger of the multifarious written matter of the existing system being continued, ib.

— — Proposed addition of trial by jury to, v. 29-47. Resolutions of House of Lords on the subject, 29. Views of jury trial — would have it in all causes in the second instance — in none in the first, 29-41. (*See Jury*.) Nothing to be seen in proposed plan that gives hope for reduction of delay, &c., 41-42. Would make the evils of jury trial simply an addition to the delays, &c., of Scottish pleading, 42. General issues a means of

abbreviation, but defective, 42-43. Judge does not condescend to frame issues in England, and of course would not in Scotland, 43. Use of jury trial for incidental or motion causes, 44. The means of delay likely to be purchasable by *mala fide* defendants, 44-45. General oppression, ib. Whether both Inner and Outer house are to have juries, 45. Evils likely to be produced by bandying the causes between the metropolis and provinces, ib. Law as to new trials grown up in England through the sufferings of litigants — proposal for Scotland should have kept in view the experience thus obtained, 46-47.

Session — Court of, in Scotland — Lord Eldon's Bill for amending the practice of, v. 47-53. Smallness of the Reform proposed, 47. Bill not the work of the nominal framer, 47-48. Division into distinguishable parts, 48-49. Historical note by editor, of reforms in the Court of Session, 49 n. Analysis of the regulations for the Judicial Establishment, 49-50. Subordinate legislation, 50. Inquisitorial and initiative authority, 50-52. Regulations as to appeals, 52. The phraseology of the Bill criticised, 52-53.

— — Correspondence with Romilly on the proposed Reforms in, x. 421-425.

— — Summary of author's opinions on proposed reforms in, v. 14.

— — Alterations in, considered in connexion with the Union, ii. 406-407.

— — Commission of inquiry as to procedure in, and its resistance to reform, v. 154-155.

— — Delay and expense of procedure in, v. 154.

— — Delays in, illustrated in the Rationale of Evidence, vii. 221-225. Sham representations, 221-222. Opinions of lawyers on, 223. Evils not concealed by them, 224. Alterations since the author wrote, 221 n, 224 n. Motives conducive to the evils, 224-225.

— — Vibrations of causes in, vii. 237.

Sessions favourably contrasted with assizes, vii. 237-238.

Settlement — Law of. Oppressive incidence of, v. 234.

— Marriage — Draught for a deed of, v. 400-402.

Settlements — Penal. *See* Transportation.

Sewell — Sir Thomas and his family. Account of, as friends of Bentham's father, x. 15-16.

— — Noticed, v. 352.

Sewers — Authority of the Health Minister regarding, by the Constitutional Code, ix. 444-445.

Sex — Influence of, on sensibility, i. 28.

Sex—Aggravation of simple corporal injury in, i. 164-167.

-- Sensibility to the moral sanction as affected by, i. 457.

-- of pursuer to be entered in demand paper, ii. 66-70.

-- of witness—Effect of on testimony, vi. 254.

Sexes—Separation of the. Provision for, in Panopticon arrangements, iv. 134-137.

-- Abolition of distinctions between, in succession, proposed, i. 335.

Sexual appetite—Pleasures and pains of the, i. 197.

Sexual connexions—Interest arising from, as affecting the trustworthiness of testimony, vii. 577-581. Husband and wife, 577-579. Concubinage, 579-581.

Sexual desire as a motive, i. 50, 197, 212.

-- Arrangements for satisfaction of, to prevent offences, i. 544-546.

-- Reasons why dislogistic terms are applied to the motives founded on, i. 213, 216, 218-219.

Shadwell—Sir Launcelot, noticed, v. 562.

Shadwell Police Office—Proposed union of, with the Thames Office, considered, x. 329-330.

Shaftesbury—Lord (the first,) characterized, iv. 447.

-- (the second,) noticed, i. 8-9 n.

Shall—meaning of the word discussed, vi. 230 n ‡.

-- and will—Inquiry into the reciprocal use of, viii. 350-353. *See* Verbs.

Shakspeare—would have put the expression "Rights of Man," into the mouths of his bad characters, had it been used in England, ii. 524.

Sham distinctions—Employment of, as a fallacy, ii. 451-453.

Sham bail—a fiction of law, vii. 284-285.

Sham notices—the kind of called Distringas animadverted on, vii. 221.

Sham pecuniary checks, on delay vexation and expense, vii. 307.

Sham plea—less obnoxious than other pleas, vii. 267.

Sham "Representations" in the Court of Session, vii. 221-225.

Sham writs of error, vii. 214-216.

Shame—Application of, as a punishment, i. 453-467. *See* Moral Sanction; Forfeiture of Reputation.

-- Sense of, as a motive, i. 51.

-- Inoperativeness of, on slaves, i. 345.

-- as a security for the trustworthiness of testimony, vi. 24, 326-327; vii. 570-571. Acts often where punishment is supposed to act, vi. 326-327. More impartial in its application, ib.

-- as the consequence of testimony—not of itself a sufficient ground for exclusion, vii. 463-465.

Shannon—Lord. His influence in the Irish Parliament, x. 94.

Sharpe—Granville—Letter from Sir James Mackintosh to, x. 428.

Shebbeare—Dr—Case of, referred to, i. 446 n.

Sheen—Trial of, noticed, vii. 257 n ‖.

Sheffield—Lord—Testimony of, in favour of the Irish Volunteers, viii. 473.

Sheffield—Adam Smith's character of, as an unprojecting town, iii. 27.

Shelburne—Lord, Marquis of Lansdowne—

Notices of, in the Preface to the Fragment on Government, i. 248, 249, 252.

Visits Bentham, 248. Bentham's intercourse with him, 249. His remarks on the Principles of Morals and Legislation, 252.

-- The Fragment on Government occasions Bentham's introduction to, x. 82.

-- calls on Bentham, x. 88.

-- Letter from, to Bentham, on Poor Laws, the Fragment on Government, &c., x. 88-89.

-- Bentham's visit to, x. 89-124.

-- Bentham's impression of the courtesies of, x. 92, 99.

-- His negotiations with Lord Chatham and Lord Holland, x. 101.

-- Account by, of an overture made by Lord North to the Rockingham Party, x. 102-103.

-- Letter to, from Bentham, on his return from Bowood, x. 114-115.

-- Estimate of, by Bentham, x. 115-116.

-- Reminiscences of the character, manners, and habits of, x. 116-118.

-- consults Bentham on Hastings' trial, x. 117-118, 181-182.

-- Letter from Bentham to, on some rare books, x. 126.

-- Letters from, on Bentham's departure for Russia, x. 148-149.

-- Proffers and attentions to Bentham on his return, x. 181-182.

-- Letter from, on Bentham's return from Russia, x. 183.

-- Bentham's opinion of, in later life, x. 186-187, 565-566.

-- Letters from, on Bentham's opinions of the House of Lords, favour for France, • Republican opinions, &c., x. 195-196.

-- Letter from, to Bentham, on the proceedings of the King of Sweden, x. 197-198.

-- attributes the answer to Bentham's Anti-Machiavel letters to George III., x. 211-212.

-- Memorandum of a conversation with, as to his political negotiations—Fox, Pitt, Thurlow, x. 214.

-- Conversation with Bentham about Parliament, x. 214.

-- Letter to Bentham, on De Witt's Letters, x. 215.

- Shelburne—Lord—Letter from, to Mr Bentham, senior, acknowledging his son's portrait, x. 225.
- Letter from, to the Duke de Rochefoucauld, with his opinion of Bentham, x. 226-227.
- Letter from Bentham to, charging him with having virtually promised to bring him in for one of the family seats in Parliament, and not keeping the promise—Sketches of the Shelburne party, and of the political position of Lord S., x. 229-242.
- Letter from, in answer to Bentham's claims, x. 242-243.
- Reply by Bentham to, admitting the justness of his views, and rejoinder, x. 243-245.
- Bentham's account to his brother of the controversy with, x. 246.
- Letter from, with questions as to Parliamentary tactics, from King Stanislaus, x. 247-248.
- Letters to and from—Visits—Pitt, Fox, and the state of France in 1791, x. 258-259.
- Letters to and from—an entertainment given by Bentham—Panopticon—French Refugees, 279-280.
- His death, x. 419.
- Had to resign for making peace, ii. 555 n.
- Miscellaneous Letters from, x. 261, 262, 313-314.
- Casual notices of, iv. 172; ix. 218 n; x. 42, 198, 219-221, 249, 271-273, 322, 428, 441, 557; xi. 79.
- Shelburne—Lady—Notices of, x. 90, 92, 96, 117.
- Her character and influence, x. 115-116.
- Her estimate of Bentham, x. 88.
- Sheridan noticed, iii. 533 n; x. 41.
- Sheriff—Feudal origin of the, iii. 350 n.
- of Middlesex—Notice of the functions of, iii. 350 n.
- Sheriff-courts in Scotland an illustration of the single-seated system, v. 18.
- Sheriffs in England—Anomalous position and authority of, v. 497.
- Sinister interest of, in regard to Juries, ii. 130.
- of London—Anomalous position of those who have attempted reforms in the matters under their authority, v. 118-121.
- Ships—Merchant—Considerations on the compulsory use of, for national defence in emergencies, ix. 404.
- Necessity of judicial authority being exercised in, iv. 334.
- Ship-board oppression obviated—Provisions for the protection of merchant seamen by a Register, and a summary complaint system—in the Constitutional Code, ix. 409-415.
- Shipley—Jonathan—Bishop of St Asaph—A school-fellow of Bentham, x. 30.
- Ship-money—The exaction of fees in courts of justice, compared to the tax of, iii. 339 n; v. 367, 444.
- Shipwreck—Proposal of honorary rewards for exertions in the case of, ii. 231.
- Shock to security—Nature of a, ii. 270 n.
- Shops—Courts of Justice compared with, ii. 73; iii. 36, 362 n, v. 359.
- Shop-Books as evidence, vii. 151, 167.
- Shopkeeper—Evidence of, to charge a customer, vii. 123, 167.
- Short-hand—matters to be taken in, in proposed Dispatch Court, iii. 418.
- as an external instrument of improvement in a language, viii. 313.
- Aptitude of, for verbatim registration, vi. 412 n.
- Short-hand Writer—an official, should be attached to each law court, vi. 414. Instance in Central Criminal Court, ib. n.
- in proposed Dispatch Court, iii. 341.
- Employment of, in legislative bodies, ii. 315, 326.
- Short-Lesson Principle—in the management of the Chrestomathic school, viii. 52-53.
- Siam—The incredulity of the king of, aduced in illustration, vii. 95, 96, 99-100.
- Sibbald—Mr, Letter to, x. 532.
- Sickness—Considerations as to the best means of providing for, through the instrumentality of savings' banks, viii. 412.
- Siddons—Mrs, noticed, vi. 146.
- Sidmouth—See Addington.
- Sidney—Lord, noticed, x. 79, 135, 214, 401.
- Sieves—Observations on the Declaration of Rights, proposed by, ii. 530-534.
- His proposed multiplication of many-seated judicatures, v. 19.
- Noticed, x. 316.
- Sight—Nature of defects in sense of, vi. 250.
- Punishment by inflictions on the organs of, i. 417.
- Sigillation—as a means of authentication of contracts, vi. 515-516.
- Signs—Collections of. Their relation, when used, to the object designated, viii. 336-337.
- of discourse divided into audible, visible, and tangible, viii. 227.
- Algebraic—Nature and application of, viii. 85-86.
- Algebra as an illustration of the employment of, viii. 37.
- Arbitrary—Use that may be made of, in Geometry, as representing demonstrated propositions, viii. 166-168.
- Signature—Proving by extraneous witnesses instead of questioning the party, vii. 448.
- Onomastic and symbolic distinguished, vi. 515.

- Signature—Impediments to proving, by non-examination of party, iii. 416.
- Signatures to Petition for justice and codification—Instructions for obtaining, v. 439-440.
- Signing judgment. The fiction of, repro-
bated, v. 472, 525.
- Silence—equivalent to confession, vii. 39.
— on examination, as evidence of delin-
quency, vii. 24-29.
- Silva Carvalho—Joze da—noticed, x. 525.
- Similitude of hands—Evidence from, vii. 177-179.
- Simony—nature and constitution of the
offence of, ii. 248.
- Simple afflictive punishments, i. 413-416.
— capital punishments, as distinguished
from simple afflictive, i. 441-442.
— and complex—Suits ranked as, ii. 80-82.
— ignominious punishments examined, i. 463-467.
- Simplicity as a property desirable in style,
viii. 311.
— in a language—Estimate of as a quality,
viii. 311, 313.
— its relation to copiousness as a quality in
language, viii. 309-310.
— of description as a property of punish-
ment, i. 405-406.
— Advantages of, in relation to the fran-
chise, iii. 464-465.
— Protection of, as a reason for the Usury
Laws, iii. 8-9.
- Simplification—Fallacious objections to, ii.
464.
- Simply restrictive punishments, i. 435-437.
- Simpson—Thomas—(The mathematician),
noticed, viii. 178.
- Simultaneity as one of the Aristotelian Post-
predicaments, viii. 236.
- Simultaneous action principle—In the man-
agement of the Chrestomathic school, viii.
53.
- Sincerity—Declaration or oath of, by a litig-
ant founding on makeshift evidence, vii.
162-163.
- Sinclair—Sir John—Letter from, to Bent-
ham, x. 300.
— — — noticed, x. 254, 302.
- Sinecures—Involve the tyranny of extor-
tion, and the turpitude of swindling, v. 92.
— Virtual—application of the term to offi-
ces—where a deputy does the work, the
clear sum earned by the principal is de-
predation, v. 380-381.
— connected with the Courts of Law—List
of, v. 288 n.
— Proper means of reduction of, a subject
for a premium, x. 76.
- Sinecurism, a mode of obtaining money on
false pretences, i. 531.
- Sinecurists—Interest of, to oppose innova-
tion, ii. 420.
- Single-seated judicatories—Principle of, ex-
plained, ii. 22.
— — — recommended in Scotch Reform, v.
18-27.
— — — Reasons for, v. 555-556.
— — — Reasons for, as expounded in the
Constitutional Code, ix. 470-473.
- Sinister ends of government—those where
any principle is allowed to predominate
over the Greatest-happiness principle,
ix. 6.
— Application of the word, to motives and
interests, i. 217; vi. 258.
- Sinister Interest. *See* Interest.
- Sinking Fund—Operation of a, on the pro-
duction of wealth, iii. 80-82. Borrowing
at a small per centage and paying at par
creates capital, 80. Incidence of the
national debt—estimate of the evils of a
sponge on it, 81. Proportion between
the amount of capital that might be created
from the same fund left in possession of
individuals, and applied in payment of
national debt, 81-82.
- Sistitive function of Judges, by the Consti-
tutional Code, ix. 508-511.
- Sittings of Courts of Justice—Times of, as
arranged for proposed Dispatch Court, iii.
406-409.
— Uninterrupted on the part of courts of
justice, recommended, vii. 371-373.
— of legislative assemblies—Admittance of
the public to, ii. 315.
— of legislative assemblies—Considerations
as to hours of, ii. 322-323.
— of Parliament—circumstances by which
they are determined, ii. 323.
- Situation of a witness—Effect of, on his tes-
timony, vi. 160-164.
— of an accused person in respect of mo-
tives, means, disposition, character, and
station, as evidence of delinquency, vii.
53-62.
- Six Acts—The, characterized, iii. 603, 621-
622; v. 246.
- Six Clerks—Abuses in the constitution and
patronage of the office of the, v. 289 n.
— — — Jobbing as to the patronage of, v.
352.
- Sketch—Initial, of the Procedure Code, ii.
178-181.
- Skill—The pleasures of, i. 18.
- Skinner—Chief Baron, noticed, v. 162.
- Skinner—Thomas, an early companion of
Bentham, x. 14.
— — — His reforms as Sheriff of London, v.
118-119.
- Skinner—Captain, account of, x. 322.
- Skip—The name of a fellow-student of
Bentham, x. 40.
- Slander—Law of, in England, in relation to
persons convicted with benefit of clergy,
i. 511.
— *See* Reputation—Offences against.

Slaves—nature of alleged community of interest of owners with, iii. 442.

- Compensation on emancipation of, i. 312-313.
- West India—Savage punishment of, i. 443.
- West India—Enormities which might be exercised against, from exclusion of their evidence, vi. 86 n.
- Associations rendered dangerous among, by the extent of their wrongs, i. 577.

Slave Trade—sacrifice of life in the, iv. 196-197 n.

Slavery—nature of, i. 123, 143 n.

- Rights and obligations considered as connected with, i. 343-347. Boundary line between it and freedom, 343-344. Difficulty of abolishing, ib. Absurdity of attributing happiness to, ib. The labour less productive than that of freemen, 345. Absence of inducements from shame, &c., 345-346. True principles of emancipation, 346.
- as a punishment, considered, i. 474.
- The—of ancient and modern times, compared, iii. 257.
- Gradual abolition of, iii. 41 n †.
- Sieyes' views regarding, considered, ii. 531-532.
- used as a popular argument against laborious punishments, i. 441.

Sleep—How much necessary for health, iv. 163 n.

Sleeping Laws—The mischievous nature of, iv. 397-398.

Sloth—Its competition with drunkenness in penal colonies, iv. 232.

- Sluggishness, &c., as designative of motives, i. 204.

Slow and Sure—A fallacy used for the delay of reforms, ii. 433-434.

Small-Debt Courts in Scotland—as proposed by Lord Swinton, v. 22, 23.

- — — contrasted in cheapness and expedition with Court of Session, v. 154.

Smart Money, in the case of military casualties—Exposition of principles applicable to, ix. 377.

Smith—Adam. His position that no laws can reduce interest below the lowest market rate, iii. 11-12.

- Arguments of, against farming the revenue, ii. 250-251.
- Letter to, on projects in Arts, &c., iii. 20-29.
- held the science of Political economy as the principal—its art the collateral object, iii. 33 n †.
- His scale of employments of capital adopted, iii. 69.
- His omission of the subject of population, iii. 72 n †.
- His wealth of nations—Substance of reports of Bank Committees recommended as addition to, iii. 133-134 n.

Smith—Adam. Opinions of, on rewards and punishments, ii. 208.

- — Mention of, at Oxford, x. 40.
- — casually noticed or quoted, ii. 213 n, 216, 228, 312, 576; iii. 10, 13-14, 18, 48, 49, 51 n, 58, 61 n, 67, 73, 77 n, 185 n; iv. 124 n; v. 201 n, 301; viii. 460.

Smith—J. Adams—a visiter of Bentham, x. 554-555.

Smith—John, M.P.—Account of, xi. 35-36.

- — Letter to, xi. 38-39.

Smith—Richard—List of Bentham's works edited by, x. 548.

- — Notes and elucidations by, i. 100, 497; ii. 191, 316, 327, 373, 536; iii. 33, 76, 106, 156, 211, 295; vi. 64.

Smith—Robert, noticed, x. 403.

Smith—The Rev. Sidney—Letter from, x. 560.

Smith—Dr Southwood—Estimate of, xi. 35.

- — — His Introduction to the Chrestomathia, viii. 11-111.
- — — His account of the Utilitarian Philosophy, and estimate of Bentham's character and mental powers, xi. 83-95.

Smith—Captain—Account of, as a visiter at Bowood, x. 104, 107.

- — — noticed, xi. 79.

Smuggled goods—Rewards to revenue officers from, ii. 199.

Smuggling—If delicacy to females should allow the continuance of, in preference to a search? i. 182.

- Wrong tone of public opinion in regard to, and remedy, i. 464-465.
- as a limit to the extent of indirect taxation, iii. 78.
- Restrictive policy creates and pays for the crime of, iii. 89-90, 92-93.
- under oppressive restrictive systems, withdraws the character of infamy from crime, iii. 95.
- Classification of, as an offence, iii. 170.
- limits the per-centage of Taxes on Trade, iv. 414.
- Exchequer Juries peculiarly liable to corruption in cases of, v. 87.
- Difficulty of getting the public to join in suppression of, from the mischievousness not being obvious, ix. 440-441.

Smyrna—visited by Bentham on his way to Russia, x. 150, 156.

Smyth—Chief Baron, noticed, v. 162.

Snail's-pace argument—a fallacy to procure delay, ii. 433-435.

Snyder—Simon—Governor of Pennsylvania

- Letter to, proposing to prepare a code for Pennsylvania, iv. 468-475.
- Letter of, to D. M. Randolph, on Bentham's offer of a code, iv. 475-476.
- His message to the Legislature of Pennsylvania on Bentham's offer of a code, iv. 476.

- Social use of language as distinguished from solitary, viii. 301.
- Use made of the term as qualificative of order, ii. 441.
 - A class of motives so styled, i. 56.
 - motives—Restraining effect of, i. 67.
 - connexions—Interest arising from, as affecting the trustworthiness of testimony, vii. 575-577.
 - distinctions—Fallacy in the French declaration of Rights as to, ii. 499-500.
- Societes de Commendite on the French system, commended, iii. 48.
- Society—distinguished into natural and political, i. 263. Former negative, latter positive, ib.
- Sieyes' definition of the composition of, criticised, ii. 530.
 - The rights of man in, according to the second French Declaration of Rights, ii. 524-525.
 - Good—Intellectual instruction an introduction to, viii. 10, 13.
 - State of—Adjustment of official incomes to, ii. 245.
 - A Political—The objects of, according to Sieyes, ii. 530-531.
 - for the encouragement of Arts—The, characterized, iii. 28.
 - Blackstone's ambiguous use of the word, i. 261-262.
- Societies—Friendly—Advantage of the project of circulating annuities to, iii. 107.
- Friendly. *See* Frugality Banks.
 - Political. Sanction to, as a preservative from insurrection, &c., i. 576-578.
 - Political, the requisition of licenses for, animadverted on, ii. 294-295.
 - Public. Projects for suppressing, in Spain, criticised, ii. 284-289.
- Socius criminis*. Principles on which he should be induced to accuse, ii. 223-225.
- Socrates—Estimate of, x. 583.
- noticed, ii. 210; viii. 120, 267.
- Socratic mode of discussion compared with the Aristotelian, viii. 236-238.
- Solander—D. C., noticed, x. 183.
- Soldier—The. Described as one of the instruments of monarchy, ix. 135-136.
- Soldiers—Qualities required in, ix. 374.
- Hospitals of retreat for, considered, ii. 219.
 - Preservation of the lives of, should be made the interest of their commanders, ii. 239-240.
 - Exclusion of, from the franchise, iii. 464.
 - Essential importance of preserving content among, ix. 340.
 - Regulations as to, by the Constitutional Code. *See* Defensive Force.
 - Utility of finding occupation for the time of, and rules applicable, ix. 341-342.
 - Collateral employments for, ix. 415-418.
- Soldiers—Advantage of raising the tone of feeling among, ix. 421-422.
- Ornaments of—toys of the monarch, x. 532.
- Soldier's code—Proposal for a, as a guide to his rights and obligations—to be delivered on enlistment, ix. 355-356.
- Solemnities—Application of, to punishments, i. 549-550.
- of deeds—Object and proper nature of, i. 551.
 - Application of, to contracts, &c. *See* Formalities.
 - for administration of oath, vi. 319-321.
- Solicitation of judges, according to the old system in France, vi. 379.
- Solicitors—Reason for examination of, as provided in Dispatch Court Bill, iii. 305.
- Provisions for examination of, in Dispatch Court Bill, iii. 410-413.
 - Charges of, for fictitious attendances before Masters in Chancery, v. 349.
- Solitary confinement. Relaxation of the rigours of, in the Panopticon—adherence to, only so far as necessary to subdue the hardened and avoid contamination or conspiracy, iv. 71-76.
- — Extent of the conduciveness of, to reformation, iv. 47.
- Solitude—The good and bad effects of, weighed, iv. 73-74.
- Solon—noticed, i. 121 n †, 191, 467.
- Somatology or Somatics—Position of in an Encyclopedical Sketch of Arts and Sciences, viii. 84-85.
- Division into Poiological and Posological, viii. 85.
- Somers—Lord—His inadequate plan for amending the system of examination, *de bene esse*, v. 40-41.
- — His opinions on the alienation of the Royal demesnes controverted, v. 284-285
 - — noticed, v. 270.
- Somerset—Duke of, and George II.—Anecdote of, x. 232.
- Sophist—Etymology of the word, ii. 379 n.
- Sorcery—Publicly recommended, as a means of counteracting impostures regarding, i. 554.
- Soul—The—defined as a human inferential entity, viii. 196.
- Sound—Communication of, by tubes, proposed for Panopticon, iv. 41.
- Sounds—The mere acquisition of, by the memory, often mistaken for an acquisition in education, viii. 44-45.
- Sources of motion—Analytical Sketch of the several, viii. 128-148. *See* Motion.
- South Sea Scheme—The, characterized, iii. 71.
- Southern—Mr., Editor of the Literary department of the Westminster Review, x. 540.
- Southey—Dr., noticed, x. 536.

Southgate—Mrs—Visit to, by Bentham in his youth, x. 47.

Sovereign—The. How he may make the law influence the happiness of his people, i. 270.

— Power of extending mercy a dangerous instrument in the hands of, i. 529.

— One who holds personal intercourse with the people most independent as a governor, i. 574.

— Uses to which he may bend promissory oaths, ii. 408-409.

— Laws for restraint of The. Place they should occupy in the code, iii. 162.

— Use of a Peerage to, as a means of corruption and intimidation, iv. 432-437.

— Inducements to, in a partly civilized state, to grant security to person and property, viii. 592-600.

Sovereigns—Offences of, in international law, divided into those *de bonne foi*, and *demaureise foi*, and the causes of the former considered, as creative of wars, ii. 539-540, 544.

— Vulgar errors as to the injustice of, ii. 539.

— See King: Monarch.

Sovereignty—Definition of ingredients of, ii. 540.

— Offences against—their nature, i. 101-103.

— Offences against—their place in the Penal code, iii. 170.

— Principle that no act of, can be exercised without express authority from the nation, in terms of the French Declaration—Criticism on, ii. 504-505.

— Distribution of, over subjects, in connexion with international law, ii. 540-544.

— in a free state—in whom it should be, ix. 96-98. See Constitutive.

— by the Constitutional Code, to be in the people, ix. 153.

Space as an absolute fictitious entity of the first order, viii. 202. The negation of body, ib. No limits, ib. But individual portions conceivable, ib.

— considered as absolute and relative, viii. 203.

— Its connexion with place, viii. 203.

— Sciences involving the predicament of, viii. 288.

Spain—Tincture of Asiatic manners in, i. 177.

— Early establishment of duelling in, i. 378 n.

— Legislation as to round hats in, i. 563 564 n.

— The projects of Goreli for the government of, criticised, ii. 284-289.

— Decrease of religious persecution in, ii. 451 n.

— Folly of, in attempting to limit exportation of precious metals, iii. 70.

— The decree of the Cortes of, of 1820 pro-

hibiting the importation of manufactured goods, criticised, iii. 88-100.

Spain—Deficiency of, in certain articles of manufacture, iii. 91.

— Difficulty of enforcing the prohibitory policy in, as against smugglers, iii. 93.

— Imports from, and exports to, iii. 101.

— George III.'s war with, piratically commenced, iv. 432.

— Testimonials from, on the author's capacity to draw up a code of laws, iv. 570-573.

— Limitation of testimony in, vii. 536-537.

— The progress of Bentham's philosophy in, viii. 465-466.

— Practice of the Roman law in, unfavourable to liberty, viii. 478.

— Proposed Penal Code for—Censure of the measures adopted by the legislative committee to prevent a free examination of, and to suppress the assistance of foreigners viii. 493-505.

— (Penal Code for)—Censure on the proposal to punish efforts to alter, as an assumption of infallibility, and a suppression of free discussion, viii. 505-514.

— (Penal Code for)—Censure on the general severity of, and the frequent recurrence of the punishment of death in, viii. 514-516.

— (Penal Code for)—Various features of, in which the many are sacrificed to the few, viii. 516-535. Not founded on the Greatest-happiness principle, 516-517. No Rationale, 517-519. Offences against the Government put before those against individuals—an illogical arrangement, as the latter the simple offence, which the former is a modification of, 519-520. Creates severe laws in favour of the aristocracy and the monarchy prejudicial to the security of the people at large, 520-522. Evil of giving official persons securities beyond those enjoyed by the community at large, 522-523. Necessity of keeping, by an apt nomenclature and classification, to the principle that no act should be punished unless it do mischief to some one, 523-525. Examples of defects in proposed code, 525-526. Examination of provisions, the effect of which would be to subject the civil tribunals to the military, and the people to martial law, 526-529. Want of a separation of the laws to which all are subjected, from those which apply to persons in a peculiar position—such as functionaries; hence additional trouble to those who have to consult the code as a rule of action, 529-532. Laws of constant concernment should be separated from those of occasional, 532. Main text, Exposition, and Rationale should be distinct, 532-533. Illustration of distinct code in case of husband and wife, 533-

534. Value of the practice of expressing identical ideas in identical words, 534-535.
- Spain—Proposed plan for preventing mischief by the ecclesiastics of, without coercion, viii. 547-550.
- Government of, a mixture of monarchy and democracy, ix. 49.
 - Efforts to instruct in the forms of legislative debating, x. 433-434, 438-439.
 - Progress of Bentham's opinions in, x. 514.
- Remarks on the Revolutionary Constitution of, x. 515.
- Effect of Bentham's remarks on hereditary legislatures in, x. 516.
 - The state of, in 1823, x. 539.
- Spanish Constitution—Letter on the defects of, viii. 482-485. General view, 482-483. The immutability-enacting clause—assumption of infallibility, and declaration against improvement, 483. Clause against the reeligibility of representatives—operates as exclusion when they have become most capable by experience, &c., 483-485. Author's more recent opinion on the subject, 485 n. Biennial election—annual preferable, 485.
- people—Letters to The, on the liberty of the Press, ii. 275-297.
 - and Portuguese affairs. Three tracts on, viii. 465-486.
- Spartans—Their exhibitions of the Helots, cited in illustration, ii. 387.
- Speaker or President of a Legislative body
- Rules as to election and functions of, ii. 327-330.
 - of the House of Commons. Ambiguous nature of the term, ii. 327 n.
 - of the House of Commons—How to obviate interruption caused by indisposition of, iii. 592.
- Speakers or debaters in legislative assemblies. Arrangements for, ii. 321-322.
- Public. Uses of fallacies to, ii. 480-481.
- Speaking correctly must have been preceded by writing correctly, as the latter necessary to the formation of Grammar, viii. 92 n.
- Public—Inadequacy of, to useful purposes, as compared with writing, iii. 466.
- Speaking trumpet—Recommended for proclamations to disperse mobs, i. 370.
- Special commission from a common Law court for examining witness, vi. 95.
- Special committees in legislative assemblies, ii. 372-373.
- Special Juries—Elements of the Art of Packing, v. 61-156.
- — a special engine of corruption, in contradistinction to ordinary juries, v. 76-84. See Juries.
 - — with reference to the Rationale of Procedure, ii. 138-139.
- Special order in equity for admission of evidence, vi. 490.
- Special pleading in English practice—Nature of, ii. 173-174; vii. 273-274.
- — Abolition of, recommended, vii. 325-326.
 - — Contrasted with the plan of anticipative survey, vii. 370.
- Special pleaders—considered as redundant judiciary assistants, ix. 462.
- Speciality distinguished from circumstantiality, vi. 286-287.
- Species—a word that cannot be employed otherwise than in relation to genus, viii. 122 n.
- The relation of, to genus, viii. 265-266.
- Specimen of a Penal Code, i. 164-168.
- Spectator—Article from, on Capital Punishments, quoted, i. 532.
- Speculations—Commercial, should be open to the employment of money in them with limited responsibility, iii. 48.
- Speculative. Abusive and fallacious use of the expression, ii. 458-459.
- Speech—Parts of—Explanation of the term, viii. 343.
- — — divided into simple and aggregated, and self-significant and non-self-significant, viii. 344-345.
 - — — Order of invention of the, viii. 326.
 - — — Systematical Sketch of, viii. 187-190.
- Speech—Power of. Psychological history of, as a means of forming and communicating ideas, viii. 227-229.
- Speeches—a better place for the use of Paradoxes than writing, ii. 465.
- Speeches—Kings'—Characteristics of, viii. 577.
- Speeches in Legislative Assemblies—Reasons why they should be over before the voting begins, ii. 343-346.
- — — No fixed order for, ii. 346-349.
 - — — Rules as to, ii. 358-364.
 - — — Publicity as to, ii. 314-315.
- Speeches in Parliament—Publication of authenticated—a security for aptitude of members, iii. 543-544, 549, 551.
- — — Project for suppressing irrelevant matter in, iii. 499 n.
 - — — Publication of those of one house useful for the other, iii. 551.
- Spencer—Earl, (George John 2d)—His conduct as to the site for the Panopticon Penitentiary, xi. 101, 113, 120, 143.
- — Letter to, showing that the erection of the Panopticon Penitentiary on his grounds will not be disadvantageous to them, xi. 107-112.
 - — noticed, x. 295.
- Spendthrifts—Popularity of, and the reason, iii. 17.
- Speranski—Notices by Dumont of his desire to apply to Bentham for a code for Russia, x. 406, 408, 416.

- Speranski—Further notices of, x. 542-543.
- Spheres—The only bodies that have one uniform surface, viii. 202.
- Spinola—Vincent—Genoese envoy to France, x. 315, 317.
- Spiritual Courts—Punishment in, by disabilities, i. 514-516.
- — — Origin of, vii. 294.
- Spiritual—The Lords, characterized, iv. 438.
- — — See Bishops.
- Spirituos liquors—Object and effect of taxing, i. 535.
- — — Noxious effects of the use of, in penal colonies, iv. 230-235.
- — — Baneful consumption of, in New South Wales, i. 495.
- Spleen, Waspishness, &c.—as designative of motives, i. 203.
- Splitting of jurisdictions—presented as a grievance in Petition for justice, v. 481-491.
- Spoilation—Concurrence of the people in any general plan of, impossible, iii. 606-607.
- Spontaneous or uninterrogated testimony, vi. 458-465;—
- — — In what cases to be received, vi. 458-460. Distinguished from interrogated evidence, 458-459. Conditions, that the statements are such, as if false, bring immediate opprobrium, and can be specifically disproved, 459. Instance—one swearing, to get an annuity, that another is alive, ib. Should be subject to scrutiny, 459-460.
- — — How to lessen the imperfections of, vi. 460-462. Distinctness the object, 460-461. Division into distinct numbered articles, 461. Use of the first person, 462. The extent of persuasive distinguished, ib.
- — — Abusive applications of, in English law, vi. 462-465. Different kinds of, 462-463. Sinister interest occasions use of, 464-465.
- Spontaneous self-inculpativ evidence. See Self-inculpativ spontaneous.
- Sport—as a motive for crime—to be peculiarly dreaded, as showing the antagonist motives so easily overcome, iv. 222.
- Spring—(the mechanical) as a source of motion, viii. 138-141. A reservoir of motion, 138. Application to Time-pieces, 139. Instruments of destruction, 140. Musical instruments, 141.
- Springs of action—Table of the, with explanations and observations, i. 197-219.
- — — What included under the denomination, i. 205.
- — — Causes of the deficiency or abundance of eulogistic and dislogistic appellatives to, i. 212-214.
- — — Service to the author of the division of, iii. 290.
- Spunge on the national debt—Charge against radicals of proposing, considered, iii. 608-611.
- — — The impolicy of, pointed out, iii. 610-611.
- Spuriousness—Application of preappointed evidence to prevention of, vi. 513.
- Declaration of suspicion of, should be made by impugner of deed, vi. 524.
- Neglect of formalities, when to be considered as evidence of, vi. 518-523. See Formalities.
- of a writing—Modes of proving, vii. 181-183. External evidence, 181-182 Internal evidence, 183.
- Square Root—Difficulty of mathematical students acquiring a clear notion of the nature of, viii. 179-180.
- Staël—Madame de—Bentham's opinions of, x. 467.
- — — Bentham's refusal to sec, xi. 79.
- — — Noticed, ii. 412 n; x. 487.
- Stage-coach Proprietors—Imperfection of existing methods of settling disputes with—Arrangements proposed, in Constitutional Code, ix. 621-623.
- Stages of suits, ii. 92-94.
- Stage-effect—to be aimed at in punishments, i. 549-550.
- — — Necessity of attending to, in judicature, vi. 321.
- Stagnation of Trade—Proposed remedy for the sufferings from, in the case of operatives, x. 85.
- Stahl—Ernest—noticed, ii. 401.
- Stammering-repetition-prohibiting principle, in the management of the Chrestomathic school, viii. 53.
- Stamp Duties—Incidence of the, ii. 580.
- — — Instances of self-acting laws, ii. 199-200.
- Stamps to attest quantity and quality—Employment of, i. 556.
- Standards of quantity—Utility of establishing, i. 555.
- Stanhope—Earl (Charles third)—Allusions to his boast of having read the statutes at large, iii. 239 n; x. 569.
- — — His method of preservation from fire by the use of plaster, iv. 97 n.
- Stanhope—Lady Hester—Notice of, x. 458.
- Stanhope—Colonel Leicester—Account of, xi. 2-3.
- — — noticed, x. 589.
- Stanislaus the last King of Poland, noticed, i. 247.
- His employment of John Lind, x. 56.
- His pension to Lind's widow, and Bentham's exertions to get her payment of it, x. 358-359.
- noticed, x. 247.
- Star-chamber—Preferable to a covertly-pensioned jury as a judicature for libel, v. 115-116.

Star-chamber—Method of proceeding before the, vii. 456 n, 459.

— Practice of, a popular argument against self-criminative evidence, or the examination of criminals, vi. 317; vii. 455-458.

— noticed, vii. 291 n, 301.

Starkie on evidence, quoted, vii. 325 n*.

State—Offences against the, distinguished from others, i. 98.

— Application of forfeiture to, i. 481-482.

— The necessity of Jury Trial in, ii. 119.

— and their severe punishments the produce of the monarchical system, ix. 37-40.

State secrets—How far the preservation of, justifies restriction of judicial publicity, vi. 368.

States of things distinguished from events, vi. 217.

States—Founders of. Criticism on Blackstone's use of the expression, i*274.

States-General of France. Criticism on mode of Procedure in, ii. 330-331 n, 345, 349, 350, 356.

Statesmen cannot make pure instruments for themselves, and must work with impure, ii. 473-474.

— The labours of, exaggerated for the exaction of reward, v. 290.

— Opinion that money is the sole influencing desire of, controverted, v. 313-316.

Station in life—Influence of, on sensibility, i. 29.

— of an accused person considered as evidence, vii. 61-62. Should be confined to exculpatory, ib.

Stationer—Law, functions of, vi. 525 n.

Statistic function of Ministers Collectively in Constitutional Code, ix. 232-253. *See* Books.

Statistical tables as to the moral state of districts proposed, ii. 232.

Statistics—Utility of, as a safeguard from crime, i. 557.

— Aid that Government should give in the collection and publication of, iii. 83-84.

— Vital—Importance of, as data for improvement among the labouring classes, viii. 410-411.

— Utility of preappointed official evidence, or registers to, iii. 83-84; vi. 61-62, 72, 76, 77, 511-512, 555, 562-564, 572-573.

— Judicial. Extent to which they may be collected, and uses to which applied, iii. 83; vi. 562-564.

— Registered. Plan in the Constitutional Code for the preservation of, and services expected from it, ix. 625-636. *See* Registrars.

Statues as honorary rewards, ii. 219.

Stature—Human—Extent of, as a question of credibility, vii. 87-88.

VOL. XI.

Statutes—Essay on the drawing of, iii. 233-283. *See* Nomography.

— State of the practice of drawing, since the preparation of the tract on Nomography, iii. 232 n.

— Inconvenience of the method of drawing, illustrated in the recital on Exchequer Bills, iii. 152.

— Rules as to the drawing of, ii. 354-358. *See* Laws—Drawing of.

— Letter to Dundas on the drawing of, x. 292-293.

— Causes of prolixity in the structure of, x. 74.

— Prolixity and defective arrangement of, with their causes, iii. 208.

— Lengthiness and obscurity of, animadverted on, iv. 3-4.

— Deficiency of, in point of brevity, precision, and facilities for reference, ii. 355.

— Confusion of, in regard to means of reference from one to another, and the sinister interests occasioning it, v. 149-150 n.

— Depravity of the style of, iii. 241-242.

— Blunders in, iii. 243.

— Effects of the depraved style of, on members of Parliament—confusion, and ignorance of what they are about, iii. 242-243.

— The redundancy of, iii. 248; vi. 523.

— Longwindedness of, iii. 248-249.

— Absence of abbreviated means of reference in, iii. 250-251. Numbers not authoritatively used to distinguish the divisions, 250. Want of arithmetical means of referring from one section to another, 250-251. Circuitous reference from one statute to another, 251.

— Rules for avoiding redundancy in, and obtaining steadiness and certainty, iii. 260-264.

— Specimens of redundancy in, iii. 263.

— Remedies for longwindedness in, iii. 264-265. Division into paragraphs, &c., ib.

— Specimen of confusion in, from attempt to put a system into one sentence, iii. 264.

— The want of facilities for consulting, v. 443.

— Substitution of brief names for, to titles, by the public, and its advantages, ii. 382.

— Hypothetic instead of categoric form used in, iii. 277 n.

— Plan for making all amendments to, symmetrical, under the control of a Legislation minister, by the Constitutional Code, ix. 430-435.

— Preambles of—Effect of in keeping the mind suspended, iii. 323.

— Preambles of—Length and complexity of, iii. 585-586 n.

— Inanity of reasons in the preambles of, i. 465.

— Abortive attempts to consolidate, ix. 432-433 n.

— Authority of, contemned by judges, vii. 311-315.

Z*

Statutes—Counteraction of, by judges, and proposed remedy, in the “Art of Packing Juries,” v. 176-186.
 — Ambiguity in, vii. 558 n.
 — Forgery of, should be punishable, vii. 140.
 — Substitution of instruction in, to regulation, in relation to forms, vi. 524 n.
 — Printed copies of, should be of the same authority with originals, vii. 140.
 — Simple plan for making amendments on, suggested, vi. 537 n.
 — Forms of conviction in, and their uses, vii. 315.
 — should be recorded and made public, vi. 77-78, 551-552.
 — Sinister interests that have led to their being made obscure and unintelligible to the public at large, vi. 551-552.
 — Declaratory—made to shield judges from the consequence of having wilfully disobeyed previous statutes, v. 182-183.
 — Promulgation of—Blackstone's notions of, discussed, i. 233.
 — at large—Nature of the task of reading, iii. 239 n.
 — of the University of Oxford—Their moral effect, ii. 261-262.
 — of the University of Oxford—Incongruities of, as illustrative of the demoralising influence of oaths, v. 213-215.
 — See Statute Labour.
 Statute-labour—an unequal tax, i. 319.
 — — Oppressive nature of the exaction, ix. 346 n.
 Statute Law distinguished from common, i. 185.
 — — and its incompatibility with common law, iv. 396-397.
 — — the only real law, iv. 483.
 — — All common law should be converted into, v. 236.
 — — The incognoscibility of, v. 235.
 — — Baneful influence exercised by Judges in the making of, v. 93.
 — — Impossible to obey it, because too extensive to be mastered, v. 546.
 — — Certainty of, as contrasted with the uncertainty of jurisprudential, vii. 206-207, 309-310, 504.
 — — Bulkiness and imperfection of, in regard to evidence, vi. 142.
 — — the requisition of more than one witness enforced by, vii. 526.
 Statute of frauds—examination of, with regard to wills, vi. 67 n †, 542-551. See Wills.
 Staunton—Sir George—noticed, x. 302.
 Steadiness—as a circumstance influencing sensibility, i. 24.
 Stealing—Definition of, i. 152.
 — Summary convictions in certain cases of, vii. 504-506.

Stealing. See Theft.
 Steam-Engine—The moving source of, to be found in alternate gassification and degassification, viii. 135.
 — — Proposed improvement on by Kempel, a Hungarian, viii. 135 n †.
 Steele—Mr—mention of, x. 252.
Stellionatus—Etymology of in Roman law, vii. 18.
 Stepmother and Stepfather—Difference in the motives and conduct of, i. 351.
 Stereoptical source of motion—The, from the descent of solid bodies, viii. 133.
 Stereosogenous source of motion—The, by the expansion caused by liquid bodies becoming solid, viii. 142-143.
 Sterne—Lawrence, noticed, v. 416.
 Stevens—the name of a school-fellow of Bentham, x. 30.
 Stewart—Dugald—His opinion on Bacon and D'Alembert's tabular survey of the departments of human knowledge, viii. 6-7.
 — — Letter making inquiry into the proportionate number of convictions for crime in Scotland, supposed to be addressed to, x. 129-131.
 Stewart—Sir James—Reference to, on population, iii. 73.
 — — — noticed, v. 301; x. 127.
 Stewart v. Fraser—Case of, cited, vi. 226 n *.
 Stillingfleet—a fellow-student of Bentham, x. 40.
 — Bishop, noticed, x. 22.
 Stimulus to exertion—Opinion that money is the sole, controverted, v. 314-316.
 Stipendiary Branch of the Defensive Force—Elements of, and constitutional regulations applying to, by the Constitutional Code, ix. 348-352. See Defensive Force.
 Stock—Expense of transfers of, iii. 119-120 n.
 — Inapplicability of transfers of, to meet small demands, iii. 134 n.
 — Reductions of interest on, as compared with the operation of the Annuity-note Project, iii. 141-144.
 — Plan for the transfer of, by conversion into Note annuities, iii. 105-153.
 — in the offices of the several public departments—Books for registering according to the Constitutional Code, ix. 235. See Books.
 Stock—Immoveable—Book, in the system of official registration in the Constitutional Code—Method of keeping, ix. 237, 242, 243-244.
 Stock—Personal—Book, in the system for registering official operations in the Constitutional Code—Method of keeping, ix. 236-237, 242, 244-245.
 Stock-brokers—Proposal to obtain revenue by taxing the profits of, ii. 599-600.

Stock-notes—Inquiry as to proposed scheme for, x. 341.

Stone—Mr., secretary to the embassy at Paris—Notices of, and of Bentham's intercourse with him, x. 184; xi. 74.

Stones—Meteoric, as illustrative of the theory of incredibility, vii. 100-101.

Stopping—The difficulty of. Uses made of the argument from, i. 363.

Stores—National. Method of keeping a correct register of, by plans and models, ix. 238-241. *See* Mimographical Registration.

Stoves—How far they are suited for producing heat without detriment to health, iv. 111.

Stow's Chronicle—Perusal of, by Bentham in childhood, x. 12.

Strangers—Admittance of, to legislative bodies, ii. 315.

Strangling as a punishment, i. 442.

Strappado—The—an Italian punishment, i. 413.

Straw—Man of—Origin of the expression, ix. 93 n.

Streets—Designation of, for purposes of indicating habitations of voters, iii. 585-586.

Strength—Bodily, as a circumstance influencing sensibility, i. 23.

Strings of questions—Confusion occasioned by putting, in the extraction of evidence, vi. 384.

Stuart—Sir John—His patronage of Mill, x. 483.

Stuart dynasty—their curing the king's evil, noticed, vii. 93.

Stupidity—The opposition offered by, to the progress of invention, viii. 277.

Sturt—The family of—Account of, as visitors at Bowood, x. 111, 112, 113.

Style—Properties desirable in, enumerated, viii. 311-312.

—Rules for, in relation to the drawing of laws, iii. 207-209.

—Illustrations of Bentham's study of, x. 125.

—Bentham's conversational opinions, and practice as to, x. 568-569.

Subalternation—Logical. Of scales in, viii. 267-268. Framed of the aggregates which are *genera generalissima*, 267. All within *entity*, ib. Division of entities, ib. Aggregates commensurate and incommensurate, ib. Superordinate and subordinate aggregates, ib. Extremes of the scale—individuality and the highest aggregation, ib. Illustration of the division of aggregates, and of definition in the three aggregates of the animal, vegetable, and mineral kingdoms, viii. 267-268.

— as applicable to the three physical kingdoms, viii. 268-269.

— Scales of application of, to invention and discovery, viii. 278.

Subdivision of a code or other literary work—An infinitesimal method of, described, v. 415.

Subdivision courts under Bankruptcy Court Act—Nature of, considered, v. 569.

Subject—a fictitious entity, viii. 205.

— of a proposition—Inquiry into the nature of, viii. 335.

— and object—Relation of, to each other, viii. 205.

Subjects—Principle of the distribution of between state and state, ii. 540-544.

Sublegislation Ministers—Provision for, in the Constitutional Code, ix. 643. Counterparts within their localities, of the several ministers of the State, ib. Necessary differences to be settled by the Sublegislatures under direction of Legislature, ib. Illustrations of difference, ib.

Sublegislatures—Provisions regarding, in the Constitutional Code, ix. 640-643. Field of service—each judicial district, 640. Functions enumerated, ib. Ministerial Function—Execution and effect to government arrangements, ib. Institution-rearing Function, as to Public Works, &c., ib. Money-supplying Function, for local expenditure, 640-641. Expenditure-watching Function, 641. Transfer-compelling Function, as to property required for public works, &c., ib. Information-elicitative Function—collecting evidence as data for proceedings, ib. Publicity to ordinances, ib. Composite Inquiry Judiciary with neighbouring sublegislatures, where mutual interests concerned, 641-642. Term of service—same as the Legislature, 642. Attendance connected with remuneration, ib. Qualification—the same as for member of the Legislature, ib. Election, ib. How removable, ib. Securities for appropriate aptitude, ib. Inaugural declaration, 642-643.

— by the Constitutional Code—Powers of Supreme Legislators as to, ix. 162.

Submission to Government—The necessity of, as deduced by Blackstone, criticised, i. 286.

Subordinates—Advantages to the Judge in employment of, vi. 422.

Subordination—Preservation of, as an object of prison discipline, iv. 122.

— Official—Meaning of the term, ix. 226-227.

Subordination-grades of Ministers in terms of the Constitutional Code, ix. 226-231.

Subornation—Nature of, i. 113 n*.

— a cause of invalidity of contracts, i. 331.

— almost always accompanies perjury on the part of a witness, i. 488; vii. 408.

— of perjury—Those who have kept up the system of affidavit-evidence guilty of, vi. 497.

Subpœna—a means by which any man may annoy another, vi. 101.

Subscription to matters of opinion. Demoralising effects of, ii. 260-262.

— to Articles of Faith—How it enfeebles the mind, x. 144.

— See Oaths; Articles.

Subscriptions to defray expense of evidence—Advertisements for, recommended, vii. 376-377.

Subsequent—used where the word future should be employed, viii. 314.

Subsidiary punishments, i. 517-519.

— satisfaction for the evils of offences, i. 386-388.

Subsidies to foreign powers. Evils of the system of, iii. 439.

— — — preferable to loans, as carrying no deceptive notion to the people, that they will be repaid, ix. 33.

Subsistence—Division of the elements of, iii. 37.

— A distinct object of the civil law, i. 302; iii. 211-213.

— Relation of to other objects of the law, i. 302-203.

— The laws relating to, i. 303-304.

— as an end of the Constitutional Code, ii. 269.

— Security for, as a branch of the Civil Code, ix. 13. The original fund—labour, ib. Causes of deficiency, ib. Remedies must be at the expense of abundance, ib.

— as an end of the distributive branch of the law, iii. 293-294.

— Axioms of Pathology applicable to, iii. 227-228.

— How far infringements on freedom of trade may be necessary for the security of, iii. 71.

— Articles of, as ingredients in the matter of wealth, iii. 37.

— Adaptation to, one of the forms in which the Government may interfere with the national wealth, iii. 35.

Subsisting Institutions—regard to be paid to in transplanting laws, i. 177-180.

Substance—how distinct from matter, viii. 201.

Substantives with auxiliaries—employment of in legislation in preference to verbs, iii. 267-268.

Substantive Law—distinguished from adjective, ii. 5-6; vi. 7.

— — extent to which the devices of the Technical system are applicable to, vii. 318-319.

— — improvement of, preferable to weak enforcement, vii. 260.

— — Position of in a general division of the law, ix. 8.

Substantives (Noun) as a part of speech—considered according to case, number, and gender, viii. 345-347.

Substantives—How to avoid ambiguity in the use of, viii. 313-316.

— Verbal with auxiliaries—Preference of to verbs, as a less ambiguous medium, viii. 315-316; x. 569.

— Verbal. Clearness in the use of, instead of verbs, x. 569.

Substitutes—Arrangements for appointment of by legislators, ix. 167-170. See Legislation.

Substitutive satisfaction for the evils occasioned by offences, i. 383-386.

Succession as a method of logical arrangement, viii. 260.

Succession (to property)—incidence of taxes on, ii. 590.

— as affected by corruption of blood, i. 480-482.

— Intestate. Proper system of, i. 334-336. Preference to the descending line, 334-335. Apportionment, 335-336.

— Proper principles of distribution on the occasion of, ix. 17-18.

— Uses of registration for the purposes of, vi. 570-574. See Genealogical facts.

— Equality promoted through legal limitation of, i. 312.

— Complexity of the English laws of, i. 323-324.

— Disputes as to in monarchies, how far beneficial to the public, viii. 570.

— Disputes regarding the right of in monarchies, as a cause of war, ii. 539, 544.

— Expense and imperfection of system of administration of, in England, ix. 633.

Successions—appropriation of vacant, on failure of relations within the forbidden degrees—Plan for, ii. 585-598; iii. 390. See Supply without Burden.

Sudder-Adawlut—The, characterized, x. 225.

Suffering—Sympathy with the infliction of, in the case of reforms, and means of reducing, v. 266.

Suffocation as a means of torture, i. 414.

SUFFRAGE—The—The nature and limitations of, according to virtual universality, iii. 559-560.

— The author's views as to the, discussed in Parliament, and misstatements there made, corrected, iv. 566-569.

— The widest practicable extent of, affords the best securities against misrule, ix. 10.

— Inadequacy of moderate Reform as to the, iii. 518-519.

— Resolutions on the, drawn up by Bentham, and moved by Sir Francis Burdett, x. 495-497.

— Equality of, an ingredient of Reform, iii. 531.

— Equality of—Brief view of what requisite to constitute, ix. 109.

— Annularity of—Brief explanation of, in the Constitutional Code, ix. 109-110.

Suffrage—Freedom of—The seductive influences tending to infringe, examined, iii. 476-482.

— Household — compared with virtually universal, iii. 464, 467 n, 470.

— Secrecy of—its protective effect, iii. 453-454.

— Secrecy of. Detail of reasons for, iii. 487-490. *See* Ballot.

— Secrecy of—Abridged statement of the arguments for, ix. 104.

— Universality of—Exposition of, in Constitutional Code, ix. 107-109. Any restriction should have special reasons, 107. Special reason in case of those under age, 107-108. Many exceptions that are not worth making, from chance of litigation, ib. Necessity to yield to the prejudice against females, 108-109.

— Virtual universality of, urged, and distinguished from absolute, iii. 452, 459-476. *See* Universality.

— Universality, secrecy, annuity, and equality of, preferable to the common terms employed, ix. 107.

Suffrages—Newspapers and the letter-post as a means of notification of, viii. 579-583.

— Method of giving, by Radical Reform Bill, iii. 577-579.

Suggestedness—cases in which it may be a security for evidence, vi. 283, 288-289.

Suggestions—Mendacity-serving—how far helps to recollection consistent with avoidance of in evidence, vi. 450-451.

Suggestive interrogation considered in the Rationale of Evidence, vi. 392-399 ;—

— Reasons against absolute prohibition of, vi. 392-397. Meaning of the term, and its connexion with "leading," 392-393. Saving of time, 393. Assistance to recollection, 393-394. Sometimes necessary to prevent misdecision, 394. Very rarely can prompt mendacity, 394-395. Would be difficult to draw a line of exclusion, 395. The presumption of law that a witness ready to perjure himself for the party who calls him, and so must not be led, considered, 396-397. Judge's consent should be had for suggestion to oblivious witness, 397.

— Conditions on which judge may allow, vi. 397-399. Whether a general rule can be made, 397-398. Multitude and variety of facts, application of the respondent, evident necessity for the sake of clearness and correctness, 398. No more information than necessary should be afforded, ib. Whether suggestive interrogation should be preceded by the usual examination? 398-399.

Suicide—Comparison between the impulses to, and those to capital crimes, i. 446.

— Means of preventing, supposed to be adopted in Greece, i. 411-412 n.

Suicide—Punishment of, vicarious, i. 479-480. Remitted through perjury of the jury, ib.

— No prohibition in Scripture against, x. 582.

— Finding it the result of insanity an instance of the inefficacy of oaths, ii. 41.

Suit—Nature of a, ii. 33.

— Commencement of, by personal application of party, ii. 63.

— Standard duration of a, ii. 88.

— An ordinary—Expense of, ii. 575 n.

— Initiatory process of a, iii. 415.

— Wherein a, consists, vi. 8.

— False presumption of want of merits from not proceeding with, vi. 49.

— An injury which may be inflicted on a man by any other, without cause, vii. 265, 493.

— Delay of, from absence of a material witness, vi. 91.

— Party commencing, should vouch for truth of his statement, vi. 298.

Suits—Maximization of the number of proper—minimization of improper, ii. 12.

— Interest of lawyers as to—how at variance with the public interest, ii. 13-14.

— Avoidance of reiteration of, ii. 64-65.

— Demand-papers for the different kinds of, ii. 66-70.

— Commencement of, by English practice, criticised, ii. 73.

— Evils of the arrangements as to, in England, with regard to fixation of times, &c., ii. 75-76.

— Their sorts, ii. 80-88. Definition of suit, 80. Sources of distinction, ib. Non-penal and Penal, ib. Simple and Complex, with illustrations, 80-82. Original and Excretitious, 82. Graduable and Non-gradable with regard to nature of demand, 84. Continuous and Expeditable, with illustrations of essentially and accidentally continuous, 84-85. Distributive-seeking, 85-86. Where several claims on one person—advantage of combining, 86-87. Imaginary distinction between law and equity, 87. Account suits, ib. Summary and chronological, 87-88. Quasi (or incompletely organized) suits, 88.

— Measures to be taken for continuance of, ii. 88-90.

— Various methods of terminating, ii. 90-92.

— Various stages of, ii. 92-94.

— None can be called trivial to those who undergo the evils of commencing them, ii. 577-578.

— The kind of, in respect of complexity, length, &c., that may be suitably disposed of by a Dispatch Court, iii. 313-315. Auxiliary judges for the complex, ib.

— in equity—Arrangements for the order, &c., of their adjudication in proposed Dispatch Court, iii. 390-395.

Suits—Interests engaged in protracting, iii. 408.

— Delays in procedure necessitate the terminating in remanet, compromise, or reference, v. 35-36.

— Delays in, a grievance charged in the Petition for justice, v. 467-468.

— Precipitation of, as a consequence of delay—a grievance charged in the Petition for justice, v. 468-470, 521-522.

— Blind fixation of times for operations in—a grievance charged in the Petition for justice, v. 470-472, 522-524.

— Mechanical substituted to mental judicature in—a grievance charged in the Petition for justice, v. 472-473, 524-525.

— Decision of, on grounds foreign to the merits—a grievance charged in the Petition for justice, v. 476-480.

— Mischievous transference and bandying of—a grievance charged in the Petition for justice, v. 473-476, 517, 525-531.

— Loss by transference of evidence—that taken before justices, 473-474. Loss of time, 474. Loss of money, ib.

— Extinction of local juries and origin of the circuit system, ib. Bandying of the Record to the circuit and back, 475.

— Unintelligibility of *Nisi prius*, 475. Real intelligible foundation, fees, 476.

— Arbitrary transference distinguished from appeal, 525-526. Statement of the operations necessary to judicial procedure,

with a view to estimating the amount of transference from jurisdiction to jurisdiction, that is absolutely necessary for justice, 526-527.

— Execution of Process, collection of evidence, and intercourse between the parties, may all necessitate transference, ib.

— Removal may be caused by tribunals of exception—military and ecclesiastical, 528.

— Removal in case of inability or death of judge, ib. Illustrations of useless and mischievous removal in the criminal branch in English practice, 528-529.

— In the Civil Branch, 529-531.

— Division of into those that should, and those that should not be recorded, vi. 410-412.

— Division of into simple and complex, vii. 289 n.

— in which suspicious testimony received—proposed record of, vi. 119; vii. 595-596.

— contingent—Use of judicial registration to, vi. 330.

— Penal and civil—Analogy between the instruments of procedure for, ii. 16-17.

Suitors—Mendacity—license to, in England, ii. 48-49.

— Reasons for preaudience of by lot in Dispatch Court Bill, iii. 305-306.

— Reason for initiatory examination of in Dispatch Court, iii. 306.

Suitors—Reasons for system of intercourse with in Dispatch Court, iii. 306.

— Provisions for judge being elected by, in proposed Dispatch Court, and reasons, iii. 332-333.

— Indigent—appointment of Eleemosynary Advocate for, iii. 342.

— in Equity—Reasons for their not petitioning for the Dispatch Court Bill, iii. 390-391 n ‡.

— Personal presence of in Court, should be not merely permitted, but obligatory, iv. 319-321.

— Detection of frauds and errors, 319. Facilities for producing real evidence, ib.

— If case not at once terminated, at any rate cleared, ib. Allegations that cannot be made good obviated, 320.

— Early knowledge of the point at issue, ib. Facilities for compromise, ib. Saves delay, 320-321.

— Initiatory examination of, for purposes of proposed Dispatch Court, iii. 413-417.

— Avoidance of preference or detriment to, in the arrangement of causes for hearing, iv. 322.

— Arrangement that should be made for communication with each other and the Judicatory, as preliminary to litigation, v. 422-423.

— Exclusion of from court, a device petitioned against in Petition for justice, v. 446-448, 508-509.

— when in the wrong—Fines against prayed for in Petition for justice, v. 503.

— sufferers where delay occasioned for Judge's convenience, vi. 92.

— not permitted to speak in court, vi. 138.

— Preliminary meeting of, vii. 184, 185, 187, 189. *See* Meeting.

— Interest of, not considered in the rules of evidence, vi. 392.

— All statements by, should be subject to punishment in case of mendacity, vi. 297-302.

— pillaged by written pleadings, vi. 331-332.

— seduced into falsehoods by their professional advisers, vi. 438, 483, 524; vii. 188, 203, 230 n, 263, 272, 275-279, 286-287, 299.

— The use of the third person instead of the first reconciles them to the falsehoods uttered for them, vi. 439.

— ought to be punished for confusion and obscurity in their statements, vi. 443.

— Uses of judicial official evidence and registration to, vi. 409, 561-562.

— Exclusion of from the presence of the Judge, vii. 226-233. *See* Parties.

— Proposed license to, to produce expensive evidence at their own cost, vii. 375-376.

— Dishonest, their advantages in the English system of pleading, vii. 275.

Suitors—Dishonest, the only persons benefited by exclusion of party's evidence, vii. 448.

- Indigent—an instance in which prejudice to cannot be avoided, vi. 411.
- Indigent—advertisement of for pecuniary assistance, vii. 376-377.

Suitors—Equity. Plan for relief of, in Dispatch Court proposal, iii. 297-317.

- Election of their own Judge, proposed to, iii. 300.
- Petition of for Dispatch Court, iii. 303-305.
- Account of measure for retro-transference of, in Dispatch Court Bill, iii. 308.
- Petitioning for Dispatch Court—information to be furnished by, form in which it is to be furnished, and directions for communication, iii. 315-316.

Suitors at Public Offices—Architectural arrangements for securing them audience in rotation, ix. 328-329.

Sully noticed, iv. 143.

Summary convictions before Justices in certain cases of theft, vii. 504-506.

Summary Judicature—advantages of, vii. 211.

- Prejudices against, vii. 198-199.
- Recording convictions on, vi. 414.
- as distinguished by lawyers from regular, iv. 333-334.
- recommended in Dispatch Court proposal, iii. 299.
- Requisites of, iii. 329.
- generally contrasted with regular, iii. 321.
- Courts in which it is practised, iii. 299-300.

Summary Suits—inapplicability, of Jury trial to, ii. 153.

- Nature of the appeal applicable to, ii. 153.

Summary and Chronical—Suits divided into, ii. 87-88.

Summary view of the Plan of a Judicature under the name of the Court of Lords' Delegates, v. 55-60.

Summary voting in Legislative Assemblies—as compared with distinct, ii. 370-372.

Sumptuary laws—Object of, i. 535.

- Impolicy of, i. 183-184.

Sunday—How convicts should be employed during the, considered, iv. 17-19.

- Employment on—Suggestions for, in connexion with religious observances, in the Panopticon Penitentiary House, iv. 161-162.
- Legislature, according to Constitutional Code, not to sit on, unless on urgent occasion, ix. 163.

Super-Books and Sub-Books, for registration of Official operations in Constitutional Code, described, ix. 234.

Superannuation—Guardianship in the case of, iii. 386.

- no good ground for excluding a witness, vi. 105; vii. 427-432.

Superannuation allowances—Evil effects of, iv. 361 n*.

Superannuation annuities—uses to which they may be converted for the benefit of the working classes, viii. 409.

Superfluity in evidence—Anticipative survey would be the means of discovering, vii. 369.

- justificative of exclusion of evidence, vi. 89.

Superintendants—Peculation by—Remedy for, i. 547.

Superiors—Character inferred from breach of respect towards, i. 77-78.

Supernatural things—Untrustworthiness of the evidence generally adduced in support of, vii. 105-106.

- Belief in, considered, vii. 101-102.
- Motives tending to produce belief in, vii. 106-111.
- Classification of, in D'Alembert's Encyclopædical Map, viii. 77-78.

Superstition—Knowledge a preservative from the influence of, viii. 13.

- Its restraining influence in barbarous times, v. 222.

Supplement—Oath in, vii. 71.

Supply without burden—Project for, in an extension of the Law of Escheat, ii. 585-598. Preface stating the circumstances in which it was first brought forward, 585. Exclusion from intestate succession of all relations beyond the prohibited degrees, and appropriation of the property to the state, 586. Deduction in some cases within the pale, ib. Arrangement as to family settlements, ib. Peers to be exempt for expediency's sake, ib. Latitude to be left to the power of bequest, ib. Appropriation and realization by public officers, 587. Incidence of the plan—latitude to which its operation should extend, 587-588. Heads of details for the organization of the project, which would have been worked out had encouragement been given to it, 588-589. Unburdensomeness of the project—no expectation being raised, no disappointment, and consequently no hardship, 589-590. A tax on succession has a pressure, because heir has once had the whole, 590. Ease of collection, 591. A check to litigation, ib. Would encourage marriage, ib. Popularity, 591-592. Comparison with legacy and probate duties, &c., 592. Calculation of produce, 592-593. Application—Remission of obnoxious taxes, 593-594. Answers to objections—Tendency to dissipate the national wealth, 594; Breach of faith, ib; Exposure to eva-

- sion, *ib.*; Tendency to glut the market with land, 594-595; Expense, 595; Increase of influence of the Crown, *ib.*; Powers for collection abused, *ib.*; Encouragement to government profusion, *ib.*; Revolution in property, *ib.*; Absorption of property in Exchequer, *ib.*; Subversion of ancient law, and innovation, 595-596. The plan less harsh than the existing law, 596. Ancient Law of Escheat, and limitations on the power of bequest, 596-597. Blackstone's opinion, 597-598.
- Supplies—Efficacy of the power of the Commons over the, *iii.* 446.
- Supporters of a system, as distinguished from advocates of it, *iv.* 201.
- Supposed—Applicability of the qualification to unoriginal evidence, *vii.* 119.
- Suppression of evidence as indicative of guilt, *vii.* 48-50.
- Suppressive remedies for chronic offences, *i.* 369-370.
- against offences—Nature of, *i.* 367.
- Supreme constitutive authority—The seat and nature of, considered, in relation to the Constitutional Code, *ix.* 95-113.
- Supreme Legislature—Exposition of the principles of, preparatory to the Constitutional Code, *ix.* 114-127.
- Supreme operative—Exposition of the principles applicable to, in the Constitutional Code, *ix.* 127-145. *See* Operative.
- Supreme power—The. Blackstone's opinions on the right of, to make laws, criticised, *i.* 283-292. Use of the word right, 283-284. Confounds consent to obey with duty of obedience, 285. Necessity of submission deduced from consent to it, 286. Theory, that no command to be obeyed which is contrary to the law of nature, or of revelation, 286-287. Utility the criterion, and each man to judge for himself, 287-288. Impossibility of restricting the powers of a Legislature, 288. Consequence of the laws being held void, 289. Practical extent to which limits exist, 290. Distinctness that disputes on the subject would assume were they based on utility, 291-292.
- Duty of the, to make laws. Blackstone's opinions on, criticised, *i.* 292-295.
- Surgeons—Analogy from the practice of, as to effect of vacations in Courts of Justice, *iv.* 378.
- Surgery—Etymology of, and place in the Chrestomathic system of Instruction, *viii.* 36.
- Professorship of, in central towns, *ii.* 257.
- National field for the experimental study of, in a system of Pauper management, *viii.* 425.
- Survey—The Ordnance. Progress of, *iii.* 580 n.
- Survey—The Ordnance. Reference to, *v.* 429.
- Survey—Commission of, for purpose of dividing the country into election districts, *iii.* 579-582.
- Survey—Anticipative, of evidence, as a *sucedaneum* to its exclusion, *vii.* 369-371. *See* Anticipative Survey.
- Survey—Geometrical—Uses of, for registration of contracts as to land, *vi.* 579.
- Suspected persons—Propriety of demanding accounts from, *i.* 557.
- Suspension of a Public-officer—Formalities in the case of, to prevent oppression, *ix.* 311.
- Suspensive power by judges, and reference to the legislature, where strict interpretation of the law unjust, *iv.* 312-315.
- Suspicion—Grounds of in evidence, enumerated, *vii.* 391.
- Note of, substituted to nullity, for neglect of formalities, *vi.* 523-525.
- of verity of evidence—causes of considered, *vi.* 153-166; *vii.* 563-591.
- should take place of exclusion, as against evidence from contaminated sources, *vi.* 112, 131-132.
- How far statements of a person labouring under, are believed, *vii.* 389.
- Conviction of perjury as a ground for, *vii.* 407.
- Suspicious connexions—Imputation of, as a fallacy used in debate, *ii.* 416.
- Suspicious evidence—Safeguards against, *vi.* 116-119.
- — Cautionary instructions to judge for weighing, *vi.* 151-175; *vii.* 563-591.
- Swear not at all*—Containing an exposure of the needlessness and mischievousness, as well as anti-christianity of the ceremony of an oath, *v.* 187-229. *See* Oath.
- — Editorial note to, with late alterations of the law, *v.* 188.
- — Advertisement to, *v.* 189.
- Swearing. *See* Oath.
- Sweden—Conduct of Britain to, in relation to the refusal of the army to adopt the war of Gustavus III., *x.* 202-203.
- Law of Divorce in, *i.* 355.
- Practice as to patents of nobility in, *ii.* 220 and n†.
- Fall of the liberties of the Diet of, *ii.* 327 n.
- Liberty of perjury purchased by the law of, *vi.* 324.
- Swediaur—Dr—notices of, *x.* 88, 190, 285, 382.
- Swedish Code—Arrangement of the, *iii.* 163.
- — Incompleteness of the, *iii.* 206.
- Sweeping classifications—Fallacy of, *ii.* 450-451.
- Swift quoted in favour of annual Parliaments, *iii.* 511 n.

Swift—His directions to servants, the model of Hamilton's Parliamentary Logic, ii. 383.
 —Noticed or quoted, iii. 515, 620; iv. 4, 246 n, 447; v. 421, 592 n; x. 412.
 Swimming—Advantage of knowing the art of, viii. 436 n.
 Swindling—Definition of, v. 595 n.
 —The term applied to Masters in Chancery exacting fees for fictitious attendances, v. 364-367.
 Swinton—Lord—Praise of, as establisher of the Small Debt Courts, v. 21-22, 23.
 Swiss League—The—An illustration of an International Judicature, ii. 552.
 Switzerland—Secrecy of Legislative proceedings in, ii. 315 n.
 Sydney—Algernon, noticed, vii. 413.
 Sydney—Penal colony of. The system of criticised. *See* Transportation.
 Sydney—Lord, author of the bill for the regulation of mad-houses, iv. 60 n.
 Syllabic-lection principle—in the management of the Chrestomathic school, viii. 53.
 Syllogism—merely an adaptation of nomenclature, vi. 442.
 Symbolic signature—as a method of authentication, vi. 515.
 Symbolical rewards, ii. 218.
 Symmetry with reference to the matter of the Constitutional Code—The nature of, ix. 3.
 Symonds—Arthur—His report on drawing acts of Parliament, iii. 232 n.
 Symonds—Dr Joseph—Letter from, to Bentham on his work on the Free States of Antiquity, and on Works on Italy, x. 138-139.
 Sympathetic Powder—Illustration from the, i. 479.
 Sympathetic Sanction—The, i. 14 n *.
 —The. Source and direction of, iii. 291-292.
 Sympathetic sensibility and bias—influence of, i. 24-25.
 Sympathy—Motive corresponding to the pleasures of, i. 52-53.
 —Based in self-regard, ix. 192.
 —The pains of, i. 20.
 —Pleasures and pains of, with the corresponding Interest and Motives, i. 202.
 —and antipathy as principles adverse to that of utility, i. 6-11. Explanation, 6-8. Sources of the various systems concerning right and wrong, 8. Enumeration of these, 8-10 n. Sometimes coincide with utility, 9-10. Most apt to err on the side of severity, 10. Source of antipathy to actions—tracing of motives, 11.
 —effect of on testimony, vii. 569-570.
 Synonymation as a mode of Exposition, viii. 248.
 Synonyms—Use of, i. 206.
 Synoptic Table of Arts and Sciences ex-

plained, viii. 82-93. *See* Encyclopedical Sketch.

Synoptic Encyclopedical Table or Diagram—uses of, and reasons for making the division in exhaustive, viii. 98-102.

Synthesis—How performed for the aggregation of logical wholes as a preliminary to logical analysis, viii. 125.

—not properly the converse of analysis, as does not predicate a homogeneous whole, viii. 75 n.

—Relation of to analysis, viii. 256-258. *See* Aggregation.

—Must precede analysis in the chronology of mental operations, viii. 265-266.

—and analysis—Improper application of to Geometry and Algebra, viii. 258-259.

System—The levelling, discussed, i. 358-364.

Systems—Unity of to be held in view in nomenclature, viii. 64-66.

T

Table attached to the Encyclopedical Sketch of Art and Science—Explanations relative to the, viii. 95-98. Division Exhaustive, 95. Art and Science used instead of Arts and Sciences as each head appertains to both, ib. Use of the Bifurcate system, and the Greek, in representing the head or superordinate as divided into two condident parts, each being in relation to the other a definition *per genus et differentiam*, 96. Use of synonyms, ib. The use of Greek-sprung terms, of synonyms, and of explanations from words in familiar use, justified, 96. Subdivision corresponding with genus and species, 97. The plan adopted to exclude obscurity and ambiguity, ib. Reasons for the different kinds of type used, 97-98.

— — — Uses of the, viii. 98-100. Compared with connected discourse less explicit, but brings the whole to the eye at once, 98-99. Admits conception and reciprocal comparison, 99. Efforts of Bacon, Chambers, and D'Alembert in the same direction, noticed, ib. Use of the table as a means of rapid analogy between one branch and another, 100. Each step gained, so much for others to start from, ib.

— — — Reasons for exhaustive division in, viii. 101-102.

Table of the springs of action, i. 197-205.

Table of Motions in Legislative Assemblies, ii. 317-320.

Table of Regulations in Legislative Assemblies, ii. 320.

Table—Synoptic—of Arts and Sciences explained, viii. 82-95. *See* Encyclopedical Sketch.

Tables—Application of to Geometry in presenting Propositions in series, according to their connexion with each other, viii. 164-166.

— of services exigible from judges, to be hung up in courts of justice, ii. 37-38, 42-43.

— showing the proportion of mullets to income, to be hung up in courts, ii. 111.

— Statistical, exhibiting the state of particular districts as to morality, &c., recommended, ii. 232.

— Reasons for employing the form of, in *Chrestomathia*, viii. 7.

— *Chrestomathic*—Notes to, viii. 8-54.

— of population, &c. Utility of, i. 557.

Tabor—The family of. Relations of the Bentham family, x. 3.

Tabular-exhibition principle—in the management of the *Chrestomathic* school, viii. 51-52.

Tacitus noticed or quoted, i. 535 ; ii. 254 ; v. 581 ; vii. 93.

Tactical Division of Logic—sacrificed by the Aristotelians to the Dialectic, viii. 218.

Tactics—Political—Essay on, ii. 301-373.

— General view of the subject of, ii. 301-302.

— — Ends that should be kept in view in a code of regulations as to, ii. 302-305. Obviating Inaction, 302 ; Useless decision, ib. ; Indecision, ib. ; Delays, ib. ; Precipitation, ib. ; Fluctuation, ib. ; Quarrels, 302-303 ; Falsehoods, 303 ; Decisions vicious in form, ib. ; Decisions vicious in their foundation, from absence, want of freedom, seduction, and error, ib. Synoptical table of the inconveniences corresponding to the several ends, 304-305.

— — Allusion to the circumstances in which the work on was written—state of France, x. 197.

— — Proposal to Morellet, for the publication of in France, x. 198-199.

— — Opinion of Romilly, Trail, and Wilson on, with Bentham's answer, x. 199-201.

— — See *Legislative Assemblies: Members*.

Tailor—Contract with for a coat, as an illustration of preappointed evidence, vi. 509-510 n.

Tait—William—Letter to, xi. 67-68.

Talbot—Mr—Notice of, as a visiter at Bowood, x. 104.

Talent—How made applicable to the public service, ii. 195.

— Want of, aids fallacies of authority, ii. 393.

— The bidding for the employment of, by offering high rewards for public services, considered, v. 310-313.

Talent—Value of lost, from defective systems of education, viii. 11.

Talleyrand—His efforts to get Bentham's works propagated in France, x. 378-380, 383, 387.

— His visit to Bentham, xi. 74-75.

— noticed, ix. 87 ; x. 185, 255, 313, 316, 565.

Tampering with evidence, official persons, witnesses, &c.—Presumption of guilt from, vii. 49 n, 50-51, 52.

Tanner v. Taylor—Case of, cited, vi. 389.

Task-description principle, in the management of the *Chrestomathic* school, viii. 51.

Taste—Utility of, ii. 254.

— Pleasure and pains of the, as springs of action, i. 197.

— Ambiguity in language spoken of as offending, iii. 245.

— Principle of, allowed, through the influence of aristocracies, to have preponderance over the Greatest-happiness principle, ix. 46.

— Bad—Objections to attacks on, ii. 254.

Tatischev—a Russian family called—Bentham's acquaintance with, x. 181.

Tattooing, as a punishment, i. 416.

Tax with monopoly—a proposal to obtain revenue by taxing the profits of bankers and stock-brokers, ii. 599-600.

Taxes—Nonpayment of. Extent of the mischief of, i. 72-73, 133 n.

— Various kinds of, which are misseated and infringements of the security of property, i. 319.

— on official salaries—Incongruity of, ii. 242-243.

— Farming the, considered, and popular prejudices exposed, ii. 249-251.

— Clause of the French Declaration of Rights regarding the equality of, ii. 517-518.

— A pacific convention would diminish, throughout Europe, ii. 533.

— Incidence of various kinds of, ii. 573, 580-581.

— Clause in the French Declaration of Rights regarding the application of, ii. 518-519.

— Proposal for a saving in, by the extension of the law of escheat, ii. 585-598.

— All encouragements by the Government to individuals must be met by, iii. 34.

— Connexion of, with national wealth, iii. 40. Growing expenses—take from enjoyment to security, ib. Past expenses or debt—do not affect existing wealth, are merely the result of previous expense, ib.

— on trade—Effect of, iii. 40.

— Income converted into capital through the instrumentality of, iii. 44.

— Colonies never pay, iii. 52.

Taxes—on rival branches of home manufacture—Incidence of, iii. 65.
 — on rival imports—Incidence of, iii. 65.
 — how they diminish wealth, iii. 76.
 — Expenditure as the counterpart of, iii. 75.
 — Direct and indirect, iii. 76-78. Latter voluntary, 76-77. Extent to which they may be carried dependent on wealth, 77. Tax on imports borne here—on exports by foreign consumer, ib. Indirect taxation with regard to pressure on good and bad habits, ib. Appropriation of successions where no near heirs—a light tax, 77-78. Taxes on justice, medicine, &c., the most oppressive, 78. Smuggling a barrier to the extent of indirect taxes, ib.
 — Effects of, on production, iii. 78-80. General rule that taxes should be only for revenue, 78. Incidence of duties by foreigners on imports from us, ib.; of duties on home manufactures, 78-79. Tax on exports, 79. International precautions for prevention of effects of rapid changes—fiscal regulations, ib. Reasons of prejudice in favour of export trade, 79-80.
 — Employment of, for a sinking fund—Effect of on the national capital, iii. 80-82.
 — Pressure of, in Britain, iii. 100.
 — Reduction of, through profits arising on project of conversion of stock into Annuity notes, iii. 123-132.
 — Principles that should regulate, iii. 204.
 — Imposition of, on everybody, to put in everybody's pocket—an illustration, v. 269.
 — Kinds of, that should be interdicted—on knowledge, justice, medicine, insurance, and for creating national institutions which the rich only can enjoy, ix. 451.
Taxes on justice, or on law proceedings—
 Rewards to injustice, ii. 211.
 — — — Objections to, ii. 243; vi. 11.
 — — — have the evil, that the creation of them is occasioned by those who profit by them, v. 98.
 — — — Objection to, overcome by calling them fees, v. 160.
 — — — Acts of Parliament against, cited, v. 353.
 — — — considered in remarks on the Bankruptcy Court Bill, v. 583-596.
 — — — Protest against, ii. 573-583. *See* **Law Taxes**.
 — — — Origin and evils of, vii. 199-201, 327-328.
 — — — Abolition of, recommended, vii. 377-378. Alteration of the law noticed, 377 n.
Taxes on medicine characterized, ii. 575-576 n; vii. 377.
Taxes on productions—Exemptions from, act as bounties, iii. 62.

Taxes on succession—Incidence of, ii. 590.
Taxation—Proper purposes of, i. 313.
 — Relation of, to punishment, i. 394.
 — Coextension of representation with—the principle criticised, iii. 467 n.
 — a power not vested in the Crown, even with regard to conquered colonies, iv. 266-269.
 — cannot be accomplished against colonies through trade without coercion, iv. 413-414.
 — The argument that the vast extent of, is a reason for not removing the minor burdens, combated, v. 303-305.
 — Pressure of, on the industrious, an argument against pensioning the idle, v. 306.
 — Proper principles of, contrasted with those in use, ix. 33-34. Consideration with financiers—not the sufferings of the taxed, but the extent of opposition to be feared, ib. Recourse should be first had to the least oppressive taxes—then as urgency demands, to the more burdensome, 34. Thus, when there is waste, it is at the cost of the most oppressively taxed, and known to be so, ib.
 — Enumeration of purposes for which there should be none, ix. 40.
 — Influence it may have in accumulating property in the country, or saving it from expenditure, x. 326.
Taylor the architect—commonly called Ball Taylor, noticed, x. 16.
Taylor—M. A.—His motion about chancery delays, x. 460-461.
Tchitchagoff—Admiral—Suggestions to, on his proposed History of the Russian Campaign, x. 477.
 — — Letters from, x. 485, 486.
 — — Suggestion to, to write his own Memoirs, x. 486.
Tea—Beneficial effect of the use of, i. 540.
Teacher—The faculties exercised by, as distinguished from those exercised by the Inventor, viii. 74-76.
Teachers—Scholars acting as, a part of the management of the Chrestomathic school, viii. 46-47.
Teaching—False notion of its being so distinct from learning that both cannot be conducted together, viii. 302.
Tears—How far an indication of grief, i. 27-28 n ||.
Technical—Meaning of the term, vii. 197 n.
 — As applied to reasons, vii. 401.
 — language—inaptitude and mischievousness of, vii. 280-283.
 — Reasons for not using, in the author's instructions as to the trustworthiness of testimony, vii. 566-567.
Technical arrangement distinguished from natural, i. 237.
Technical Economy, as to manufactures, &c.—Source of information as to, in a

- system of Pauper management, viii. 426.
- Technical language—Wherein that of law differs from that of other sciences, iii. 269-270.
- Technical legal terms—Examples of, requiring special exposition, v. 413.
- Technical system of Procedure—Resumé of the aberrations of, ii. 178-181.
- compared with natural procedure, ii. 169-178.
- The devices of, as distinguished from the arrangements of natural procedure, v. 8-14.
- Courts of, contrasted with those of natural procedure as to the character of the suitors, v. 22.
- Substitution of the natural to, urged in Petition for justice, v. 445.
- Devices of—List of, as complained of in Petition for justice, v. 446.
- The forms in which evidence is considered by, vi. 141-143.
- Notice of the author's remarks on, by Editor of Original Edition of Rationale of Evidence, vi. 202.
- The various evils of. *See* the various Chapters of Book VIII. of Rationale of Evidence, Vol. VII. 106-334.
- Reasons for an examination of, in connexion with exclusion of evidence, vii. 196-197.
- Contrasted with the natural, vii. 197-199.
- General recapitulation of the interests causing the evils of, vii. 211-214.
- The vices introduced to by the fee-gathering principle, particularly exemplified, vii. 214-225. *See* Fee-gathering.
- Remedies suggested for the evils of, vii. 320-329. *See* Remedies.
- Apology for the exposure of, vii. 329-334.
- Evils of, adduced in answer to the fallacy that judicial forms are the shields of liberty, viii. 478-479.
- casually animadverted on, ii. 7; vi. 411, 443, 446, 466, 479, 585; vii. 43, 166, 193.
- Technical Terms—Unapt, continued from the desire of adepts to preserve a palpable distinction between themselves and the uninitiated, viii. 183-184.
- Technicalities—The theory that they are a check on the judge considered, vii. 324.
- Legal—Advantages of improving, and prejudices against improvement, iii. 270-274.
- Evils of, illustrated in Finance, iii. 204.
- Technology of Arts and Manufactures as a branch of the Chrestomathic system of Instruction, viii. 38-39.
- Division of, with a view to pleasures and pains, as a specimen of the method of filling up an encyclopedical analysis, viii. 90-91 n.
- Technology, or the application of Mechanical Philosophy to commercial purposes, expressed by Catastatico-Chrestic Anthropurgics in the Encyclopedical Sketch of Art and Science, viii. 88.
- Sketch of the field of, viii. 148-150. Advantage of the application of, to the mechanical employments, with a Rationale or explanation, viii. 148-150.
- General. Specimen of from Wilkins' Essay towards a real character, &c., viii. 150-155.
- Telemachus—Influence of the perusal of, on Bentham's early opinions, x. 10-11.
- Temerity—nature of falsehood from, vi. 292-293.
- in evidence punished by public opinion, vi. 327.
- Incorrectness occasioned by, should be punished, vi. 280, 295-296.
- and evil consciousness—The distinction between, unknown in English law, ii. 579-580 n.
- Temperament—bodily and mental—as circumstances influencing sensibility, i. 27.
- Temperance in Penitentiaries—Conduciveness of to reformation, i. 499.
- Temperate—Use made of the term in delaying reforms, ii. 433-434.
- and intemperate reform—A distinction created for fallacious purposes, ii. 452-453.
- Temple—Sir William—The confidence between De Witt and, ii. 553-554.
- Temple—The. Advice from, to Sir Richard Philips in relation to his inquiries on the packing of special juries, and comments, v. 143-146.
- Temptation—Method of ascertaining the strength of, i. 67, 87.
- Making emoluments sufficient to exclude, ii. 244-245.
- Responsibility to be increased with, i. 548.
- Means of reducing, by high salaries to public officers, &c., i. 548-549.
- How far extent of salary a guarantee against? i. 234.
- Effect of, on testimony of witness, vi. 154. *See* Interest; Motive.
- In what circumstances no ground for reducing punishment, i. 400.
- Tenants—Manner in which influences may be used against, at elections, iii. 479-482.
- Tendency of acts—Inference of disposition from, i. 60-68. *See* Dispositions.
- Tenor—Transcript in, vii. 139-140.
- Inference of authenticity from, vii. 178-180.
- Inference of spuriousness from, vii. 181.
- distinguished from purport, viii. 44.
- Tension—as productive of motion in connexion with springs, viii. 139.

Tenterden—Lord—Strictness of interpretation of Indictments by, ii. 14.

— — noticed, iii. 375-376; iv. 447; v. 562, 592; x. 572, 595.

Terig and Macdonald—Trial of, cited, vii. 101 n.

Terms used in legislative acts—Fixation and exposition of the meaning of, iii. 592-594.

— Expositions of, with reference to a Pan-nomion, or universal code, iii. 217-224.

— Impostor—Use of, as fallacies of confusion, ii. 438-440.

Terms (in the English courts) compared with vacation time, vii. 241-245.

— and Circuits—Nature of, discussed, vi. 91 n.

— Delay and precipitation occasioned by, grievances presented in Petition for justice, v. 467, 469.

Term business—Factitious, vii. 242-243.

Terminology—Legal—Evils of the existing system—advantages of, and prejudices against, improvement, iii. 269-274.

Territorial dominion—How the relations of sovereign and subject created by, ii. 541-542.

Territory—Disputes regarding violation of, as a cause of war, ii. 544.

— Boundaries, &c., of, in Constitutional Code, ix. 147-150.

Terror—Application of means of, to prison discipline, iv. 10-11.

Terrorism—Analysis of the operation of, in elections, iii. 479-482.

— at elections—compared with bribery, iii. 482-485.

Test and corporation acts—The, characterized, i. 437; ii. 227, 265-266.

Tests—Religious—A testimony in favour of the prohibited religion, iv. 398 n.

Testimony—Causes of belief in, vi. 235-244. *See* Belief.

— Causes of trustworthiness and untrustworthiness in, vi. 17-21.

— secured from misrepresentation and oblivion by registration, vi. 79-80.

— Vexation attending the giving of, vi. 93-95.

— False—The prompting causes of, examined, vi. 158-159.

— remoteness of, from seat of perception—Effect of, vi. 222-223.

— Modes of incorrectness in, vi. 244-247.

— Dangers to be guarded against with regard to, vi. 279-282.

— of parties—Exclusion of, vii. 226-233.

— of parties—Impropriety of excluding, vii. 487-489.

— of co-parties for and against each other. *See* Co-parties.

— Exemptions from the burden of hearing, in certain circumstances—the propriety of, considered, vii. 472-486. *See* Exemption.

Testimony of plaintiff—Examination of the course pursued in regard to, by English law, vii. 489-496.

— of defendant—Examination of the course pursued in regard to, by English law, vii. 496-506. *See* Defendant.

— Interest in general considered as a ground of untrustworthiness in, vii. 567-573.

— Pecuniary interest as a ground of untrustworthiness in, vii. 573-575.

— Interest derived from social connexions as a ground of untrustworthiness in, vii. 575-577.

— Interest derived from the sexual connexions as a ground of untrustworthiness in, vii. 577-581.

— Interest derived from connexion with the suit as a ground of untrustworthiness, vii. 581-584.

— Improbability as a cause of untrustworthiness in, vii. 585-591.

— *See* Evidence; Witness.

— Exclusion of. *See* Exclusion.

— Spontaneous, vi. 458-465. *See* Spontaneous.

— Spontaneous self-inculpativ. *See* Self-inculpativ.

— Extraction of. *See* Extraction.

Texitogenous source of motion—The, by the contraction occasioned by fusion, viii. 142.

Thames Police—Proposed union of, with the Shadwell Office, discussed, x. 329-330.

— Heads of a Bill for regulating the, x. 330-333.

— — Correspondence as to, x. 333-335.

Theatres—Sanatory authority as to, by Health Minister, in Constitutional Code, ix. 445.

— Good effects to which they may be rendered conducive, i. 540.

Theft—Position of, in the subdivisions of the Penal Code, iii. 166.

— Genus of the offence, i. 117-118.

— Forms of enactment with regard to, iii. 277.

— Reputation of being guilty of—Instances of its subjecting to punishment, vii. 446 n.

— above forty shillings—Law as to, altered, vi. 381 n 2.

— Summary conviction for certain kinds of, vii. 504-506.

Thelematic source of motion—applied to the will as a source of muscular motion, viii. 134.

Thelematology—applied to sciences in which the will is concerned in the production of a result, viii. 288-289.

Thelematoscopic Pneumatology, or Ethics—Position of, in the Encyclopedical Sketch of Art and Science, viii. 89-90.

— — Division into Dicastic and Exegetic, viii. 92-93.

Thelsson v. Staples—Case of, vii. 356 n.

- Theodosius I.—Absurd application of religion by, to punishment, i. 412.
- Theology—Manner in which opinions in, carried by force, vii. 109 n.
- Theoretical—Abusive and fallacious use of the epithet, as a term of reproach, ii. 458-459; vii. 504.
- Theoretical Ethics—Position of, in the Encyclopedical Sketch of Art and Science, viii. 94.
- Theory—Encouragement to, as the first step in the career of invention, ii. 256.
- Those who cry out about, indulge in bad, ii. 442.
- Good in, and bad in practice, the expression, and its fallacious use, criticised, ii. 459-460; iii. 467 n.
- Unpopularity of the term, iv. 177.
- Theory of evidence—Gilbert's, discussed, vi. 183-187.
- Therapeutics—Etymology of, and place in the Chrestomathic system of Instruction, viii. 36.
- Theresean Code—Emblematic frontispiece of, i. 550.
- — arrangement of the, iii. 163.
- — Sorcery legislated for in, i. 554.
- — referred to, i. 153; vi. 504.
- Thieves—Their mutual tuition in prisons, i. 427-428.
- Propriety of giving the public instruction as to the schemes resorted to by, i. 554.
- Honour among. Dangerous nature of the principle termed, iv. 225-226; vi. 265-266.
- Things, as the first general title of the Civil Code, iii. 176-178. Natural and artificial, 176. Employable and consumable, 176-177. Individually valuable, and valuable in mass, 177. Sensible and insensible, ib. Simple and complex, ib. Individuation, 177-178. Roman divisions, 178.
- Evidence from, or real evidence, as a branch of circumstantial, vii. 8-18. *See* Real Evidence.
- states of, distinguished from events, vi. 217.
- and Persons—Division of Rights of, in the Roman Law, criticised, iii. 184.
- Thirst, and the want &c. of the means of quenching it, as motives, i. 197.
- Thompson—Mr William, of Cork—Letter to, on the Chrestomathic system of Education, x. 506-507.
- Thomson—Dr, the chemist, noticed, viii. 217; x. 401-402.
- Thomson's Seasons—Bentham's impression of, from the perusal of in childhood, x. 22.
- Thornbury—The poisoned pancake of, adduced in illustration, ii. 463.
- Thornton—Henry—His work on Paper credit noticed, x. 389, 413.
- Thought—considered as the basis of language, and its operations in that respect examined, viii. 320-323.
- Thought—Words as the signs of, the subject of exposition, viii. 242-243.
- The employment of, in suggesting remedies to abuses, held up to contempt, ii. 457-459.
- Decisions without, vii. 246-249.
- Acquaintance with, facilitated through a knowledge of the principles of language the sign of it, viii. 344.
- Threat to testify against—how far it affects the trustworthiness of testimony, vii. 23-24.
- as circumstantial evidence of delinquency, vii. 21.
- Infirmative circumstances applicable to, as evidence, vii. 23-24.
- as an offence—position of in the Penal Code, iii. 168.
- Submission to as an extenuation, i. 79.
- Three Tracts on Spanish and Portuguese Affairs, with a continual eye to English ones, viii. 463-486.
- Thrift—Unpopularity of the virtue of, iii. 17.
- Throckmorton—Sir Nicholas—Trial of, cited, vii. 461.
- Throne—Lustre and dignity of the—Depredation masked under support of, ix. 89.
- Danger of giving official power to a person nearly allied to, vi. 556 n.
- Thurlow—Lord—Characteristics of, ii. 175; x. 94.
- Charge of breach of faith against, by Lord Lansdowne, x. 214.
- — noticed, iii. 476 n; x. 59.
- Tidd's Practice quoted, vii. 359 n ‡.
- Tierney—Mr—noticed, iii. 532.
- Tilley—Case of, cited, vii. 190 n ‡.
- Tilsit—Peace of, alluded to, vi. 368.
- Timber—Naval—Suggestions for procuring a supply of, viii. 421.
- Time—a physical fictitious entity, viii. 200.
- Its connexion with place as the name of a fictitious entity, viii. 204.
- next in order of simplicity to place, as an entity connected with relation, viii. 203.
- Influence of, on matters of legislation, i. 188-194.
- The Innovator-General, by altering the adaptation of Institutions to their purpose—a fallacy, ii. 419-420.
- Fixation of the meaning of words designative of, in legislative acts, iii. 593.
- Considerations as to, with regard to *alibi* evidence, vii. 112.
- Interval of, to be allowed to witnesses to answer questions, considered, vi. 449-450.
- Particularity as to, in confessions and instruments of accusation, vii. 38.
- Sciences involving the predicament of, viii. 287.
- Times—New and old—Confusion between,

- involved in references to the "wisdom of our ancestors," ii. 398-399; x. 69.
- Times**—Regulations and Explanations with regard to, as a general title of the civil code, iii. 178-179.
- Remote—are visible to us in remote places, vii. 90.
- Timidity, cowardice, &c.**, as designative of motives, i. 204.
- a cause of incorrectness in oral testimony, vi. 254.
- of witness—may betray to self-contradiction, &c., from browbeating, vi. 406-407.
- an impediment to the exposure of offences, viii. 578.
- Tindal's Christianity** as old as the Creation—Bentham's impression of, from perusal in boyhood, x. 22.
- Tippoo Saib** noticed, iv. 417.
- Tithes**—Objectionable incidence of, ii. 244.
- Title**—meaning of the term, i. 153, 293 n.
- of a discourse—wherein it consists, i. 283.
- Proof of—Nature of property affected by the requisites for, iii. 134 n.
- Title deeds.** See **Deeds**.
- Titles** as the foundation of rights—The nomenclature of considered, with reference to the terms collative and ablative events, iii. 189-190.
- which confer a right of property, i. 327-330. Actual possession, 327. Ancient *bona fide* possession, ib. Prescription, ib. Land and its produce, 327-328. Things nourished on, and thrown on the land, 328. Lands from which water has retreated, ib. Ameliorations, 328-329. Mines, 329. Fishings in great waters, ib. Hunting, 329-330.
- Registration of, i. 552. See **Registration**.
- The various, on which a claim may be laid in a suit, vii. 278.
- by succession, &c.—Use of registers for the purpose of, vi. 570-574. See **Genealogical Facts**.
- or headings to the different clauses of deeds, recommended as conducive to clearness, v. 394.
- Tobacco**—Use of, excluded in the Panopticon system, iv. 158.
- Tolerance**—Religious—Criticism on the clause in the French Declaration of Rights regarding, ii. 513-515.
- Tongue**—Analogical punishment inflicted through the, i. 408.
- Tooke**—John Horne—Estimate of, x. 404.
- — His discoveries in grammar estimated, viii. 120, 185, 188.
- — Method of selecting Special juries, as exhibited in the trial of, v. 103-104 n.
- — Trial of, cited, vii. 251.
- — Mention of, x. 582.
- Topographical function**—The, of the Local Headman, by the Constitutional Code, ix. 619.
- Topography**—a science involving the predicament of place, viii. 286.
- The field of, separated from that of geography, viii. 243.
- Toreno**—Count—Letter from, requesting an opinion on the Penal Code for Spain, iv. 571.
- — Letters to, on the proposed Penal Code, delivered in by the Legislative Committee of the Spanish Cortes, viii. 457-554.
- — History of the publication of the letters to, viii. 489-490.
- — The grounds of the opinions addressed to, to be certain preëstablished positions, with reference to the Greatest-happiness principle, with the reasons, viii. 490-493.
- — Correspondence with, in reference to his conduct regarding the letters on the Spanish Code, viii. 551-554.
- Tories**—Characteristics of the, iii. 527.
- Form that the arguments of, against reform assume, iii. 600.
- Their abhorrence of reform a professed creed, iv. 423.
- The. Examination of the interests and corresponding motives of, against reform, iii. 528-529.
- In what they differ from the Whigs, ii. 443.
- — casually referred to, ii. 443; iii. 486, 590 n; viii. 469.
- Torture**—Relation of, to punishment, i. 393.
- Kinds of, that have been applied as punishments, i. 414.
- Punishment of death with, considered in its effects, i. 442-444.
- originated with ill-considered scruples about evidence, vii. 522-523, 525.
- Interrogation confounded with, vii. 454-455.
- Tothill Fields** as a spot for a national Penitentiary, x. 323; xi. 116, 153.
- Tott**—Baron de, noticed, x. 402.
- Tourel**—Jacques de—Estimate of, x. 142.
- — His defence of Torture, i. 231.
- Tours**—Practice of the Provincial Assembly of, ii. 341.
- Towns**—Large—Prejudices against, and ineffectual efforts to restrain, iii. 74.
- Townsend**—Lord, noticed, x. 108.
- Townsend**—The Rev. Joseph—Notices of, as a visiter at Bowood, x. 92, 97, 99, 100, 123.
- — Letter from Bentham to, x. 139-140.
- — Letter from, to Bentham, x. 140-141.
- — Estimate of the abilities and character of, x. 515, 517.

Townsend—The Hon. Thomas, noticed, x. 141.

Tracts on Poor-laws and Pauper management, viii. 358-461.

— Three, on Spanish and Portuguese affairs, viii. 463-486.

Tracton—Lord and Lady—Account of, as visitors at Bowood, x. 100, 103-104.

Trade—Taxes restraining, an infringement on property, j. 319.

— New sources of—Inimicality of the usury laws to, through limitation of the rate of interest, iii. 22.

— Effect of free competition on, ii. 228.

— Uselessness and mischief of laws interfering with, ii. 549.

— No branch of, that is carried on without government interference can be disadvantageous, iii. 63.

— War for the sake of—its absurdity, ii. 557-558.

— Impolicy of attempts by Government to give a direction to, iii. 43-44. Depends on amount of capital, which changing the channel cannot increase, 43. Governors don't know profitable investments so well as individuals, ib. If they did, indication of them would be sufficient, 43-44.

— Increase of wealth by, iii. 70-72. Advantages of all voluntary exchange, 70. Excess of produce of labour the real balance of trade, ib. Ingredients in the superiority of one country over another, in, ib. Fallacies as to balance in gold, ib. Instances of mercantile insanity—Mississippi and South Sea, 70-71. Subsistence and defence to be considered, 71. Information which Government should propagate as to inventions, prices, &c., ib. Patents, 70-71.

— Addition to security of, in the project of Annuity notes, iii. 133-136.

— The child of capital, depending on its amount, not on the extent of the market, • iii. 54; iv. 411.

— Course of, used as an argument for the admissibility of evidence otherwise excluded, vii. 167, 402-403.

— Stagnation of—Proposed remedy of, to operatives, x. 85.

— in opinions (of counsel) brought into existence by the bad state of the law, vii. 315-318.

— See Profession.

Trades—Proposal of a system of Technology applicable to, viii. 148-150.

— Freedom in the choice of, to convicts, as an ingredient in prison discipline, and an advantage to the community, iv. 49-51.

— Multiplication of, not necessary in prison discipline, iv. 51-52.

— Uses of statistical information as to the comparative salubrity of different kinds of, ix. 627.

Trade Minister—Provisions regarding in the Constitutional Code, ix. 447-448. Subjects in regard to which trade has benefit from regulation—Incidence of taxation, Patent rights, &c., 447. Functions, ib. Connexion with Finance Minister, 447-448.

Tradesmen—Extent to which they give credit, and their inducements to it, iii. 6-7.

— Their books, as evidence, vii. 151.

Trading justices—account of, vii. 327.

Trail—James—Account of, as an early friend of Bentham, x. 133-135.

— Letter from, on the politics of 1764, x. 135.

— — — — On Voltaire's Memoirs, Smith's Wealth of Nations, &c., x. 136.

— — — — On the ascent of Lunardi's balloon, x. 136-138.

— — — — Urging Bentham's return from Russia, x. 171-172.

— — His opinion on the work on Political Tactics, x. 199-201.

— — Letter from—Progress of Bentham's works in Ireland, x. 300.

— — His opinion on Eschêat *vice* Taxation, x. 305.

— — casually noticed, x. 99, 165, 168, 175, 212, 213, 217, 247.

Training—A plan for, applicable to a volunteer defensive force, in the Constitutional Code, ix. 343-348.

Transcripts—Nature of, in connexion with evidence, vii. 139-141. Three kinds—1st, Verbatim; 2d, In purport only; 3d, In effect only, 139. The various ways of making transcripts, 140. Superior applicability of printing, 140-141.

— Sources of untrustworthiness in, vii. 141-143. Double source of defect—original and transcript, 141. As compared with hearsay, more likely to be accurate, fraud apart, 142. Inaccuracies from want of attention, ib. What forms they may assume, 142-143.

— In what cases and on what conditions to be received in evidence, vii. 143-149. Original accessible, 143-144. Original known to be out of the country, 144-145. The original in a state of exprovinciation, 145. Original known to have existed, but to have become extinct, 145-146. Former existence of original known, but present unknown, 146. Existence of original has not been ascertained, 146-147. Original in power of adverse party, 148-149.

— Arrangements for securing the fidelity of, vi. 74-85; vii. 149-150.

— and originals—How to distinguish between, vii. 150-152.

— May be evidence as to genuineness of original, vi. 90.

— Successions of—probative force weakened with each, vii. 155.

Transcripts--Aberrations of English law as to admission of, in evidence, vii. 169-170.

— Provisional decision on the evidence of, when original inaccessible, vii, 379-380.

— External securities for. *See* Interrogation; Oath; Punishment; Publicity; Shame; Writing.

Transcription—Modes of, vii. 139-141.

Transcriptitious evidence—or supposed written evidence transmitted through written, vii. 139-152. *See* Transcripts.

— — as makeshift evidence, vi, 57.

— — Preappointed, as distinguished from Original, vi. 508.

— — compared with Original, vi. 171-174.

Transcriptional registration as applied to contracts, vi. 570-582. *See* Registration.

Transfer—Judicial—for receiving defendant's statement, ii. 115-116.

Transfers of Property—Plan for a Register of, in the Constitutional Code, ix. 633-634.

— of Stock—Substitute for, by conversion of stock into Note annuities, iii. 105-153.

-- of Stock—Expense of, as compared with that of the Annuity-note Project, iii. 119-120 n.

Transference of suits—Means of, in Dispatch Court Bill compared with Established, iii. 331 n.

Transgressions—Notification and publicity
as to ; advantages of, and impediments
to, in fear, indolence, and poverty, viii.
577-579.

Transient and continued—Acts distinguish-
ed into, i. 37.

Transitive and Intransitive—Division of acts into, i. 36-37.

— Punishment, i. 480-482.

Translation—Application of as a school exercise, viii. 45.

— as a means of exposition, viii. 244-245.

Translations of Laws—Cases in which they are necessary, i. 158-159.

Transmitted evidence, vii. 152-159. *See*
Media.

Transplanting Laws—Principles to be followed in, i. 172-177. Circumstances influencing sensibility to be considered, 172-173. Information to be acquired as to the people, 173. The offences—Simple corporeal injuries, ib.; Irreparable corporeal injuries, ib.; Wrongful confinement and banishment, 173-174; Simple mental injuries, 174; Semi-public offences, 174-175; Offences against reputation, 175-176; Against person and reputation, 176. Offences against property, ib. Offences against condition, 177.

— Regard to be had to existing institutions in, i. 177-180. Physical and moral source of peculiarities, 177. Consideration whether the transference may not be, all things considered, prejudicial, Vol. XI.

178. Suitability of habits—illustration—Jury-trial in Bengal, 178-179. Existence and fitness of the institution, to be both considered, 179-180.

Transplanting Laws—Rules respecting the method of, i. 180-184. No law to be changed without special reason, 181. Alterations not to be made to gratify individual tastes, ib. Things indifferent to be left to the moral sanction, ib. Easiest attack on a bad system—the refusal of enforcement to it, ib. Preponderant dissatisfaction to be avoided, ib. Indirect Legislation to be preferred to coercion, 181-182. Reforms which will assist the introduction of others, to be preferred, 182. Management of prejudices, 182-184.

— A means of showing their defects, from the recipients not having prejudices in their favour—Illustrations from transference of English law to India, i. 184-188.

Transportation—constituted of exile, confinement, and bondage, iv. 276 n.

—considered as a complex punishment, i. 490-497. Evils of the system of contracting—by buying off, punishment avoided, 490-491. Does not suffice as an example—Real hardships great, but idea entertained of them mixed with pleasure, 491-492. Unconduciveness to reformation—General profligacy—Imbecility of the authorities—Extent of intoxication, &c., 492-495. Only incapacitates the convict locally, 495. No compensation to injured party, 495-496. Want of economy, 496. Extent of the punishment left to the operation of chance, 496-497. Not a satisfactory foundation for a colony, 497.

— as a punishment, and its inferiority to the Penitentiary system, discussed in the first letter to Lord Pelham, in Panopticon v. New South Wales, iv. 173-211. Objects of punishment enumerated, 174. *Example*—obliterated by distance, ib. *Reformation* not effected, 175-183. No tutelage of the convicts, or control of their vicious propensities, ib. No inspection—Provision of soldiers, chaplains, &c., no succedaneum, 175-176. Superior provision for religious instruction and observances in the Panopticon—Collins quoted as evidence of uncorrected improbity, improvidence, and deterioration, in New South Wales, after the attempted remedy, 176-180. New South Wales worse in this respect, than an old-established colony would be, 180-183. *Incapacitation* for fresh offences not accomplished, 183-199. The offences deemed not to be committed because they are not in sight, 183-185. Local exclusion an easy—reformation a difficult object, 185-186. Distance the

sole consideration entertained, 186-188. A thoughtlessly administered punishment—may involve much more than it is called, *e. g.* by inability to return when the period expired, 189-190. Requisition of sanction of the governor to return, 190-193. Death the simplest preventive: a frequent fruit of the carelessness of the system, 193-199. No provision for compensation of injured by this species of punishment, 199-201. *Economy* of the two systems compared, 201-211. Difference of individual cost nearly four to one, 201-204. Deficiency notwithstanding in the establishment at New South Wales, 205. Unprofitableness of colonies in general, and peculiar barrenness of this species, 206-207. Profitableness not contended for by those advocates who understand the practice, 207-208. Question, whether the colony is a nursery of soldiers and seamen for the East Indies, discussed, 208-209. Discovery of plants all that has been got for much expenditure, 210-211.

Transportation—Compared with the Panopticon system and the American Penitentiaries, in the second letter to Lord Pelham, *iv.* 212-248. Introduction of the hard-labour system in Pennsylvania, and adoption in New York, 212-213. Illustrations of corruption and sloth in New South Wales, 214-215. Prodigality, improvidence, and drunkenness illustrated, 215-216. Industry and frugality in the Philadelphia and New York Penitentiaries, 216-217. Superior spur to industry in the Panopticon mode, 217. Exemplifications of depravity in New South Wales, 217-220. Incendiarism peculiarly frequent, 220-222. Peculiarly dangerous disposition shown where sport alone the motive to great crimes, 222-223. Spiritual remedies unavailing and treated with contempt, 223-224. Conduct in American Penitentiaries contrasted, 224. Difficulty of obtaining evidence—combinations—noxious principle of honour among thieves, 224-226. Laxity and corruption of the police, 226-230. Drunkenness as a main cause of the crime and non-reformation, 230-235. Exemplifications of reformation in the Penitentiaries, both as to prisoners and discharged convicts, 235-236. Sobriety and strictness, as produced by inspection, the cause, 236-238. American system still imperfect, in respect of the want of inspection on the Panopticon principle, 238-242. Penitentiary system superior, not only in point of reformation, but of example, 242-245. The hopelessness of economy becoming a feature in the management of the settlement, 245-247. The hulks a subject deferred, 247-248.

Transportation system in America and New South Wales compared, *iv.* 184-185 *n.*

— and banishment compared, *i.* 433-435.

— General estimate of, as a punishment, *iv.* 6-7.

— The punishment of, aggravated by arbitrary laws of the governors of penal colonies, necessitated by the absence of a constitutional legislative system, *iv.* 272-276. *See* New South Wales.

— Illegal. Securities against, adapted to a Mahomedan state, *viii.* 587-588.

Travelling—Method of facilitating to the poor, *viii.* 417-418.

Travelling—disputes—settling function, of Local Headmen, by Constitutional Code, *ix.* 621-623.

Tread-mill—Use of, in prison discipline, considered; has the effect of compelling the unwilling to labour, as well as the willing, *iv.* 147.

— Use of, recommended as a means of exercising convicts, *iv.* 157-160.

Treason—Extent of the criminality of, considered, *vii.* 412-413.

— Criminality of, and application of forfeiture as a protection, *i.* 481-482.

— Requisition of two witnesses to prove, considered, *vii.* 526-527.

— System of evidence for, invented to shield the traitors of William III.'s reign, *vii.* 528.

— Self-defence in connexion with the punishment of, *i.* 392.

— Punishment of, casually noticed, *i.* 443, 461 *n* +; *vii.* 527.

— by insurance of enemies' property, &c., *i.* 547.

— against associates, &c. Infamy attached to, *ii.* 224.

Treason-Bill—Observations on, addressed to the Morning Herald—absurd nomenclature: compassing and imagining, *x.* 320-322.

— Farther remarks on, *x.* 335-336.

Treason-law—The severities of, a fruit of the monarchical system, *ix.* 38.

— Tyranny of the, *viii.* 472-473.

Treasure—Public. Offences against the—Their classification in the Penal Code, *iii.* 170.

Treasury—The. Burke's reform of the payment of salaries in, *ii.* 198.

Treaties—Publicity as to, urged, *ii.* 554-560.

— Commercial, not accordant with the interests of Britain, *ii.* 549.

— Principles on which the observance of should be founded, and on which they are observed in practice, *ii.* 403-404.

— Disarming. Proposal of, as preparatory to a plan of perpetual peace, *ii.* 550-552.

Treby—Chief-Justice, noticed, *vii.* 428.

Tree—Encyclopedical or Rameau—Instruc-

- tions for planting on any given part of the field of art and science, viii. 118-121.
- Tree—Encyclopedical. *See* Bifurcate division.
- Trent—Council of, noticed, vi. 11.
- Trespass—a term invented by the Court of King's Bench for getting jurisdiction, v. 494.
- Treux—visited by Bentham on his way to Russia, x. 150.
- Trial—Whether labour should be exacted from accused person before, iv. 59-60.
- criminal—Form of, vi. 473-474.
- New, on the ground of insufficient evidence, vii. 164.
- New, evils of having none in criminal cases, vi. 378.
- by Jury. *See* Jury.
- Trials—Publication of, vi. 377.
- English and French—superiority of the former in point of dramatic interest, vi. 441.
- Tribunal—Reasons why there should only be a single judge to each, iv. 325-328; ix. 470-473. *See* Single-seated.
- Tribunal—The Public-opinion—speed and certainty of its operations, i. 458.
- — and the official compared, viii. 561-572. *See* Public Opinion.
- Tribunals—Essay on the method of parceling out the jurisdiction of, iv. 328-338. *See* Jurisdiction.
- Provision for, in the Constitutional Code, ix. 454-541. *See* Judiciary.
- Long intervals between the sittings of, condemned, vii. 241-245.
- Uninterrupted sittings of, recommended, vii. 371-373.
- within reach, recommended, vii. 371.
- out of reach—Evils of, vii. 234-236, 352-353.
- Exclusion of parties from, vii. 226-233. *See* Parties.
- of Appeal—Essay on, iv. 338-353. *See* Appeal.
- See* Courts; Judge.
- Tribune—Propriety of a, in Legislative Assemblies, ii. 322.
- of the people, was generally chosen from the aristocracy, iii. 469-470.
- in the French Chamber of Deputies—absurdity of, iv. 423.
- Tried men—Means of obtaining what are commonly called, as representatives, ix. 176.
- Triennial Parliaments—The inadequacy of, as compared with annual, iii. 521-525.
- as a compromise, iii. 599-600.
- Trigonometrical survey—Allusion to the, in reference to a plan for a map to accompany a Real property register, v. 429.
- Tripoli in Barbary—Securities against misrule, with special reference to, viii. 555-600.
- Tripolitza—Bentham chosen a member of the Philosophical Society of, iv. 589.
- Troops—Treaties limiting the numbers of, as preparatory to a perpetual peace, ii. 550-552.
- Trouvelle—M. de—The project of, x. 253.
- Trover—Nature of the action of, vii. 278, 287 n, 550.
- Trowbridge—Sir Thomas—Letter to, x. 400-401.
- Trust—Nature and constitution of a, ii. 35-37.
- The Franchise a, i. 484 n.
- Considerations as to disclosure of, vi. 100 n.
- Suits as to, ranked as continuous, ii. 85.
- Inability of the common-law courts to superintend, vii. 293.
- Offences against, i. 98, 105-113, 134. Definition of trust, 105-106. Mutual position of parties, 106-107. Whether this kind of offence could come under the designation of offences against condition, 107; or against property, 108. Property and condition distinguished, 109-110. Divided into such as concern existence, and such as concern exercise of trust, 110-113. Former distinguished into what may fall on the person who should hold the trust, and what may fall on others, 110-112. Breach, abuse, and disturbance of trust, distinguished, 112-113. Bribery, 113.
- Characteristics of the class of offences against, i. 141-142.
- Trusts—The absence of provisions relating to, in common law, shows the need of codification, v. 486.
- Trust funds—Utility of circulating Annuity notes as an investment for, iii. 144.
- Trust management compared with contract, ii. 249-251.
- inferiority of to contract, especially where the trust is to a board, iv. 125-134.
- Trustee—Pleasures derived from condition of, with respect to forfeiture as a punishment, i. 472.
- Litigation through a, ii. 35-36.
- Trustees and Benefitees—List of the kinds of, iii. 410.
- and *cestuy que trust*—communications between should not be excluded from evidence, vii. 480.
- Trustworthiness of evidence—Causes of, vi. 18-21—intellectual, 18. Moral, (viz. the physical, the popular, the political, and the religious sanctions,) 18-21.
- Moral causes of, vi. 18-19, 256-276. *See* Motives; Sanctions.
- Securities for, generally stated, vi. 21-28, 282-286. Internal enumerated, 283. External enumerated, 22, 284. The securities grouped, 285-286. Punishment, or the political sanction, 22-23.

Shame, 24. Interrogation and counter-interrogation, 24-25. Counter-evidence, 25. Writing, 25-26. Publicity, 26-27. Privacy preferable in some cases, 27-28.

Trustworthiness of evidence—Securities for—statements of a party exempt from, vii. 262-263. *See* Mendacity-license.

— Securities for—how applied to the extraction of evidence, vi. 30-34.

— External securities for. *See* Cross-examination; Counter-evidence; Interrogation; Publicity; Punishment; Sanctions; Shame; Writing.

— Internal securities for, vi. 286-291. Particularity, 286-287. Speciality and circumstantiality, ib. Recollectedness and unpremeditatedness, 287-288. Suggestedness to good—unsuggestedness to bad effect, 288-289. Interrogatedness, ib. Distinctness, ib. Permanence, 289-291.

— Psychological causes of, vi. 247-250. Uses of the inquiry—service to the legislator, 247. Exclusion, 247-248. The intellectual and moral faculties as concerned in evidence, 248-249. When mendacity has place, 249. When verity, ib. When falsehood, ib. Bias, 249-250.

— False securities for, iv. 28-30. Oaths, 28-29. Exclusions, 29-30. *See* Oath; Exclusion.

— Intellectual causes of, vi. 250-256. Deception confined to the judgment, 250-251. Illustrations, 251. Insanity, ib. Failure of memory, ib. Vivacity of the conception as distinct from correctness, 251-252. Vivacity dependent on importance, 251. Erroneous and dubious recollection, 252. Refreshing the memory, 253. Inaptitude of expression, 253-254. Timidity, 254. Imagination, 255-256. Object of the analysis, 256.

— Constituted of correctness and completeness, vi. 211.

— Scale of, vi. 167-168.

— Practical scale of in English law, vi. 175.

— Compared with probative force, vi. 17 n°.

— How to be estimated and secured, in official evidence, or registers, vi. 72-76, 559-561.

— And untrustworthiness as attributes, compared with credibility and incredibility, vii. 77 n°.

— And untrustworthiness with regard to official evidence, vi. 556-561. Impartiality and responsibility, 556. Responsibility to be effective must be burthen-some, 557. Dangerous irresponsibility of public boards, 557-558. Rules for estimating and securing trustworthiness, 559-561.

Truth—Estimate of the uses of an adherence to, i. 78.

Truth—Prejudices to be encountered in following, i. 49.

— Injured by rewards for supporting opinions, ii. 211.

— The hand-maid of justice, v. 6.

— cannot be served by rewards for particular opinions, x. 146.

— Securities for, in proposed Dispatch Court, iii. 416-417.

— of an irrational proposition—Occasions in which it is assumed in the use of language, vi. 240.

— Our belief that men speak the, founded on experience, vi. 242.

— Human testimony generally conformable to, vi. 247.

— Love of ease favourable to, vi. 262.

— Dependence of all mankind on a regard to in others, vi. 264. *See* Sanctions.

— Publicity a means of enforcing, on witnesses, vi. 358.

— All men inclined to, if they have no motive to the contrary, vi. 401.

— The interests which bind a witness to the observance of, vii. 569.

— Can never be helped by hirelings, ix. 93.

— The merit of exertions in favour of, not to be estimated without a knowledge of the errors dispersed, x. 85.

— Departure from. *See* Falsehood.

Truth versus Ashhurst, or Law as it is, contrasted with what it is said to be, v. 231-237.

— — Rouilly's opinion against the printing of, x. 288.

Tubal Cain—A projector, iii. 27.

Tubes—Conversation—proposed for Panopticon, iv. 41.

— The extent to which they may be made use of in large buildings, &c., considered, iv. 84.

— Plan for employing, in the Public offices, ix. 327.

Tucker—Dean. His views on the American war, ii. 312.

— — noticed, ii. 546 n°; x. 128.

Tucker—Thomas—Secretary to the Mutual Improvement Society—Letters to, x. 488-489, 505-506.

Tumult and turbulence—Vagueness of, as articles of charge in indictments for sedition, v. 256-257.

Tumults—Popular. Arrangements for protecting prisons from the effects of, iv. 105-109.

Turbulent disposition—a man's possessing, charged in an indictment as if it were an offence, v. 255.

Turgot—Paper on the state of French politics addressed to, by Benjamin Vaughan, x. 217-219.

— noticed, i. 163; ii. 492; x. 93.

Turkey—Policy of the Government of, i. 310.

Turkey—Bentham's passage through, on his way to Russia, x. 150-158.
 Turkish vessel—Anecdote of the master of, vii. 94.
 Turnbull on the Philadelphia Penitentiary quoted, iv. 213, 216, 235-237, 238-240, 242, 243.
 Turnbull—Colonel, an American—Mention of, x. 302.
 Turner—Sir Barnard—His Reforms as Sheriff of London, v. 118-119.
 Tuscany—Experience against death punishment in, i. 531.
 Tutelary motives distinguished from seducing, i. 65.
 Tutors—Scholars acting as, a part of the management of the Chrestomathic school, viii. 47.
 Tweeddale—Marquis of (George Hay, 8th)—Mill made tutor to, x. 483.
 Twelve tables—Laws of, vii. 251.
 Twelve—Prejudices in favour of the number, ii. 129.
 Twiss—Mr Horace—Non-attendance of, as Commissioner for proof of debts, v. 364-365.
 Type and archetype, or sign and thing signified—Relation between, viii. 331-333.
 Type—Use of a peculiar kind of, as a means of abbreviation, iii. 595.
 Tyranny—Nature of, i. 53.
 — Despotism, &c., as designative of motives, i. 199.
 — Death-punishment an instrument in the hands of, i. 448.
 — Danger of—Circumstances in which it had merged into that of anarchy, iii. 146.
 — The remedy against, iii. 219.
 — exhibited in the administration of the law in England, vi. 150.
 — The power of pardoning criminals capriciously one of the instruments of, ix. 36-37.
 — The power of pardon maintained to predicate, ix. 606.
 Tyrrell—Mr—His suggestions to the Real property commissioners commended and quoted, v. 419-420, 432-433.

U

Udall—Trial of, noticed, vii. 460.
 Ulterior safeguards against the inconveniences that may arise from dispensing with the exclusionary rules of evidence, vii. 593-597.
 Unanimity of juries—Operation of, in weakening the power of Government, ii. 119-122, 125-126.
 — — Extent to which it should exist, ii. 128.
 — — General considerations and remarks on the effects of, ii. 41, 134-136; vi. 273, 274, 275.

Unanimity of Juries—How it increases the corruptive power in the case of special juries, v. 84-86.
 — — How it gives temptation and means of corruption, the gaining one firm man being sufficient, v. 174-175.
 — — Forced, a grievance complained of in Petition for justice, v. 462-467.
 — — See Jury.
 Unbelievers—The effect of refusing the evidence of, x. 582.
 Uncertainty in punishments—Effect of, i. 401-402.
 — of the law, nourished by lawyers, ii. 75; vi. 551-552.
 — — Interest of lawyers in, vii. 206-207, 310.
 — — aided by the system of nullification, on grounds of informality, vii. 256.
 — — Renders necessary the opinion trade, vii. 315-318.
 Uncivilized people—How far the laws of civilized adapted to, i. 189-192.
 Uncle and Niece—Reasons for prohibiting marriage between, i. 350.
 Uncognoscibility as a vice in legislation, iii. 242-243. *Ab extrâ* from want of promulgation—*ab intrâ* from bad drawing, ib.
 Uncommissioned - Prehension - Approving function of the Local Headman, by the Constitutional Code, ix. 617-618.
 Unconstitutional and illegal—Distinction between, iii. 359 n *.
 Understanding—State of, as affecting intention, i. 35-36.
 — Relation of, to acts, i. 43-46. See Consciousness.
 — Motives to the, distinguished from motives to the will, i. 208.
 — Vitiating of, by demanding declarations to opinion, ii. 266.
 — Influence of, on understanding, as distinguished from that of will on will, ii. 439.
 — Influence of, in relation to jurymen, v. 68.
 — Corruption of the, jointly with morals, through university oaths, v. 209-219.
 Undisguised exclusions of evidence, vi. 110-113.
 Unhappiness—what the term is employed to designate, iii. 214.
 Uniforms—Professional. Application of, i. 557.
 Uniformity—Act of, characterized, ii. 405.
 Unilateral and Plurilateral—Suits divided into, ii. 82-84.
 Uninterrogated testimony, vi. 458-465. See Spontaneous.
 Uninterrupted-action principle—in the management of the Chrestomathic school, viii. 53.
 Union with Ireland—Reflections on the forcible continuance of the, xi. 64-66.

- Union of England and Scotland—Considerations as to legislation inconsistent with, i. 290-291 n.
- — — considered in connexion with irrevocable laws, ii. 405-407. Gave an excuse for peculiar securities for the Church of England, 405-406. Blackstone's use of this, 406. The immutable principle not applied to the administration of justice in Scotland, and why? 406-407.
- Unions—Political—Letter to Mr Tait on, xi. 67-68.
- United Irishmen—Danger to the peace of New South Wales felt from, iv. 205.
- Unity in operations of government—Advantages of, i. 571.
- Universal—Limits of application of the term, with respect to the laws, iii. 217.
- Universal Grammar—Hints towards an elementary treatise on, for the Chrestomathic system of Education, viii. 185-191.
- — — Fragments on, viii. 339-357. *See Grammar.*
- Universality of suffrage—as an element of Radical Reform, iii. 558.
- — — Virtual, nature of, and exceptions it presumes, iii. 559-560.
- — — Virtual, urged and distinguished from absolute, iii. 452.
- — — Considered in detail, iii. 459-476. General interest for general advantage, 459-460. Early history of the suffrage, 459-461 n. Enjoyment of power, 461. Propagation of habits of courtesy, 461-462. Exceptions, 462-465—Minors, 462-463; Females, 463-464; Non-readers, 464. Principle of simplicity, 464-465. Objections on ground of anarchy, &c., answered, 465-466. Partiality in popular elections for the aristocracy, with illustrations, 467-470. Would prefer absolute universality to existing system, 470. Comparison with householder, ib. Objection from danger of levelling answered, 471. Education of the people would improve—opposed by those who complain of their ignorance, 471-472. America and the Westminster election Practical illustrations, 472-474. Recommended spread of political information, 474-475. Not anarchy, but good government, that is dreaded, 475-476.
- — — Effect of, if without the ballot, iii. 488.
- — — Nature of, explained in the Constitutional Code, ix. 107-109.
- — — Illustrated in the Irish Volunteer Association, iii. 614, 616-617.
- Universities—The English—Incomes of officials in, compared with those in the Church, ii. 216.
- — — Morality of, as constituted by the oaths and laws, ii. 261-262.
- Universities—The English—should be held as obstacles, instead of assistants, to useful learning, ii. 468.
- — — Relation of the, to the proposed Chrestomathic school, viii. 21-22.
- — — Though unorthodoxy will exclude from, vice never does, ix. 453.
- University oaths—Falsity of, an illustration of the mischievous tendency of oaths, v. 195; vi. 29.
- — — Corruption of national morals and understanding from, exposed in *Swear not at all*, v. 209-219.
- — — illustrative of the feebleness of the religious sanction, vi. 274.
- Unnatural—Unmeaning uses made of the word, i. 9 n.
- Unoriginal evidence—Modifications of, vi. 59.
- — — in general, vii. 129-132. Divided into cases where persons the media, and cases where signs, 129-130. Trustworthiness decreasing with increase of media, 131. Modifications enumerated, ib. Characteristics as distinguishing them from original evidence, 131-132.
- — — Makeshift, vi. 57.
- Unpaid judges—The evils of the system of, do not arise from the simple fact of their being unpaid, ix. 524.
- Unpopular tribunals—The practice of, used as an excuse for the exclusion of self-criminative evidence, vii. 455-458.
- Unpopularity—Bad effect of a punishment being subject to, i. 94-95.
- — — a disadvantage in the case of a judge, though undeserved, iv. 359.
- — — How far an argument against a measure, x. 146-147.
- Unpreappointed evidence—Difference of, from preappointed, vi. 68-71.
- Unpremeditatedness, a security for evidence, vi. 283, 287-288.
- Unprofitableness—renders punishment unmeet, i. 397.
- Unreiterated spelling principle—in the management of the Chrestomathic school, viii. 53.
- Unsuggestedness—a security for evidence, vi. 283, 288-289.
- Untrustworthiness in evidence—wherein it consists, vi. 15 n †.
- — — Interest in general considered as a ground of, vii. 567-573.
- — — Pecuniary interest as a ground of, vii. 573-575.
- — — Interest derived from social connexions as a ground of, vii. 575-577.
- — — Interest derived from the sexual connexions as a ground of, vii. 577-581.
- — — Interest derived from connexion with the suit, as a ground of, vii. 581-584.
- — — Improbability as a ground of, vii. 585-591. *See Improbability.*

- Untrustworthiness in transcripts—Sources of, vii. 141-143.
- of the evidence on which facts disconformable to the course of nature have been supported, vii. 105-106.
- — See Trustworthiness.
- Unwilling witness—Cross-examination of, on the side on which he is called, vi. 244, 381 note 1, 402-403.
- Unwritten evidence—Precedence given to, over written, by lawyers, vi. 143-145.
- Unwritten Law—Promulgation would convert into real, i. 157.
- — Evils of, iii. 206; vi. 65.
- — Should not only be cut off, but prohibited, iii. 209-210.
- — See Common Law; Judge-made Law.
- Uranological chronology—Defined and located in the Chrestomathic system of Instruction, viii. 38.
- Uranological geography—Defined and located in the Chrestomathic system of Instruction, viii. 38.
- Uranoscopic physiurgics, or astronomy—its position in the Encyclopedical Sketch of Art and Science, vii. 86.
- Urbanity—Falshoods of, what? vi. 267
- Principles of, in relation to topics of conversation, x. 518-519, 531-532.
- Usage—Reference to, as a means of persuading those who will not hear reason, iii. 513.
- As a source of instruction in political speculations, iii. 515-516.
- Usages—Matters to be considered in the abrogation of, i. 180-184.
- Use. Fallacy of the injunction not to argue against the, from the abuse, ii. 469.
- Usury—Defence of, showing the impolicy of legal restraints on the terms of pecuniary bargains, iii. 1-29.
- — Notices of Preparation of in Russia, x. 167, 170.
- — Sent from Russia, with instructions for printing, x. 174, 175-176.
- — Proposed Dedication to, x. 174-175.
- — Character of, and extent to which its principles have been put in practice, x. 176.
- — Dr Reid's opinion of, x. 176-177.
- — Premium offered by the Emperor of Germany for answers to questions founded on, x. 177.
- Usury Laws—Editorial notice of alterations in the, iii. 2.
- — The general policy of, as limitation on the terms of pecuniary bargains, iii. 3-5. The limiting law must be founded on custom, 3-4. Custom of his neighbours thus forced on the lender, ib. Instances of variety, ib. Convenience the rule in fixing the line should be applied to individual cases, ib. People allowed their own prices for other things, ib. Why should it not be penal to take *less* than the legal rate? 4-5.
- Usury Laws—Prevention of prodigality used as an argument for, iii. 5-7.
- — Protection of indigence used as an argument for, iii. 7-8.
- — Protection of simplicity used as an argument for, iii. 8-9. Would apply with greater force to prices, which not so well known in the market as interest, ib.
- — Mischiefs of The, iii. 9-11. Precluding people from the money they require, 9. Recourse to selling instead of borrowing, ib. Necessity of selling mortgaged land at a period of depreciation, 9-10. Insurance for the danger of breaking the law, ib. Evasion, ib. Loss of reputation to infringers, 10-11. Corruption by fostering treachery and ingratitude, 11.
- — Efficacy of, iii. 11-12. Examination of Dr Smith's position, that no laws can force interest below the lowest market rate, ib.
- — Instances of virtual infringements of, by law, iii. 13-14. Drawing and redrawing, 13. Selling bills, ib. Pawn-broking, ib. Bottomry and Respondentia, 14.
- — Blackstone on, criticised, iii. 14-15.
- — Grounds of the prejudices on which they rest, iii. 15-18. Influence of authority, 15-16. A Christian and anti-jewish notion, 16. Aristotle's opinion, ib. Money-lenders unpopular among spendthrifts, 17. All favour of the law to the borrower, 17-18.
- — Compound interest involved in the prejudice in favour, iii. 18-19.
- — Prejudicial to the progress of arts and manufactures, iii. 20-29.
- — create an Income Tax on lenders in favour of borrowers, iii. 47.
- — A bounty on the exportation of money to countries where it can be more profitably used, iii. 47.
- — Publicity the best remedy for the evils sought to be overcome by, i. 554.
- UTILITY—The principle of, i. 1-4. Influence of pains and pleasures, 1. Principle of Utility explained, ib. Later substitution of the term, Greatest Happiness, ib. n *. Utility defined, 1-2. Interest of community, 2; of individuals, ib. An action conformable to the principle of utility, ib. Measure of Government conformable, ib. Laws or dictates of utility, ib. Who a partisan of, ib. Meaning of ought and ought not, right and wrong, ib. Superfluous and impracticability of proof for the principle, ib. Not adopted in practice, ib. Attacks on it, 2-3. *Argumenta ad hominem* in favour of, 3-4.
- Wedderburn's opinion, that the principle of dangerous, i. 3 n, 245-246; ii. 463 n.
- Principles adverse to that of, i. 4-11 n.

- Asceticism, 4-6. (*See* Asceticism.) Sympathy and antipathy, 6-10. (*See* Sympathy.) Why no mention of the Theological principle, 10-11.
- Utility—Objections to the principle of, answered by Dumont, i. 11-13.
- Motives as conformable or repugnant to, i. 56-59.
 - should be the base of reasons attached to Codes of Law, i. 163.
 - as a presiding principle, first noticed, i. 237.
 - Principle of—the term suggested from Hume, i. 242.
 - The term, Greatest-happiness principle preferred to, i. 271 n.
 - Test for discovering whether all notions of government are not founded on, i. 271.
 - Propriety of resting all disputes regarding the power of Government upon, i. 291.
 - Principle of, to be kept in view in all legislation, i. 324.
 - The theory of obligations founded on, i. 321.
 - Extent to which it rules popular opinions on punishments in Britain, i. 411.
 - Attempts made to pit religion against, i. 412.
 - How reconcilable with the exercise of benevolence, i. 563 n.
 - The criterion of obedience or resistance, i. 287-288.
 - The direction given to the religious sanction should be conformable to, i. 564.
 - Authority aimed against, ii. 401.
 - Dangerousness of, a fallacy, ii. 463.
 - Custom substituted to, by the supporters of abuse, ii. 477.
 - General, of the world. Should be kept in view by diplomatists, that it may give a direction to their proceedings, ii. 537.
 - Characteristic of laws not according to, iii. 180-181.
 - Import given to, by considerations regarding pleasure and pain, iii. 286.
 - How a reference to, should rule the Rationale, or series of reasons that accompany a code of laws, iv. 540-543.
 - as affording the only test of moral right and wrong, vi. 238.
 - Extent to which reasons are grounded on, in legislative argumentation, vii. 481, 485.
 - rejection of the term by lawyers, vii. 310 n †.
 - professed to be followed in Roman law, vi. 492 n.
 - Considerations as to keeping more fully in view, in mathematical instruction, viii. 161-164.
 - Logic only worthy of study as conducive to, viii. 220.
 - Application of the test of, to punishment, in a passage from the Common-Place Book, x. 141-142.

- Utility—Relation to, as a bond of connexion for the arts and sciences, viii. 241.
- Maxims of—their nature, x. 142.
 - The principle of—A call on the opponents of, to answer with reason and not with ribaldry, x. 142.
 - a vague word, x. 582.
- Utopian—Abusive and fallacious use of the expression, ii. 459.
- Utrecht—Treaty of, noticed, ii. 555 n.
- Utterance—Facility of, as a property desirable in language, viii. 305.

V

- Vacation of seats in the Commons—Provisions regarding, in Radical Reform Bill, iii. 589-591.
- — Practice regarding, criticised, iii. 589-590 n.
- Vacations in Courts of Justice—Evil effects of, iv. 378.
- as a source of delay of justice, v. 516.
 - Mischief of, in cessation of justice, iii. 406; vii. 241-245.
- Vacation-days—What to be counted, by Constitutional Code, ix. 163.
- Vaccination—Discovery of, and disinterested adoption by physicians, ii. 212 n.
- Vagrancy—Statutory evidence of, vii. 558 n.
- Inefficacy of existing laws to put down —should be made collateral to a system of Poor-laws, viii. 402-403.
- Vagrants—Coercive powers over, that should be vested in administrators of Poor-law, viii. 370, 401-406.
- Vague Generalities—The employment of, in political discussion, viewed as fallacies, ii. 440-448.
- Valentinian I.—Illustration of effect of prejudices on punishments from, i. 412.
- Valeria Lex, concerning infamy, i. 459 n †.
- Valle—José Del, Correspondence with, on tactics of political assemblies, iv. 592-593.
- — Letters from, x. 558-559; xi. 17-18, 48-49, 71.
 - — Letter to, xi. 18-19.
- Value of pleasure and pain—how to estimate, i. 15-17.
- Error regarding, as invalidating contracts, i. 332.
 - of punishment—how to be estimated, i. 398-399.
 - Intrinsic, and in affection distinguished, i. 310, 321-322.
 - in affection. Principles of restitution in the case of, i. 374-375.
 - Use of finding the elements of, in regard to pleasures and pains, iii. 286-287.
- Vampires, among the delusions fostered by ignorance, viii. 13.

- Vane**—Sir Harry—Bill of exceptions refused to, vi. 419.
- Vanity**, ostentation, &c., as designative of motives, i. 201.
- Vansittart**—Nicholas, Lord Bexley—Correspondence and controversy with, on the Annuity-note project, x. 364-373.
- — Letters to, on Sir F. Eden and the Globe Insurance Company, x. 375-376.
- — Conduct of, in relation to the Panopticon Penitentiary, xi. 125-126.
- — Letter to Sir Samuel Romilly on his conduct regarding the Panopticon Penitentiary, x. 162-164.
- — casually noticed, x. 362, 396 ; xi. 119.
- Variability**—as a property of punishments, i. 402-403.
- Vattel**—Estimate of, x. 584.
- noticed, i. 341.
- Vaughan**—Benjamin—A paper by, on the Position of the National Assembly, and the state of French Politics, addressed to Turgot, and submitted to Bentham, x. 217-219.
- — Letters from, x. 247, 248, 249, 255-256, 264-265, 287.
- — casually noticed, x. 228, 274, 280.
- Vaux v. Waltham**—Case of, cited, vi. 455.
- Vegetable Chemistry**—defined and located in the Chrestomathic system of Instruction, viii. 31-32.
- Vegetables**—Expansion in the growth of, as a cause of motion, viii. 142-143.
- Plan for preserving, in ice, x. 346-350.
- Vegetation**—Theory of. Place of, in the Chrestomathic system of Instruction, viii. 34-35.
- Venality**—always to be presumed where it can be safely accomplished, iv. 375.
- Fallacies as to, in the case of the sale of offices for the public behoof, iv. 374-375.
- Venditive Function of local Headman in Constitutional Code**, ix. 619.
- Vendue master, or Venditor**, as a Judiciary officer by the Constitutional Code, ix. 466.
- Venezuela**—Proposal by Bentham to emigrate to, x. 457-458.
- Vengeance**—Punishment suggested by, i. 391.
- Private, superseded by legal redress, i. 542.
- The avoidance of the principle of, in punishment, ix. 23.
- Extent of the evil to society, of crimes occasioned by, i. 75.
- Venice**—Secrecy of legislative proceedings in, vi. 79.
- Secret accusations and convictions in, considered, i. 573.
- Ventilation**—Dislike of the uneducated to, and necessity of its being urged on them, iv. 96.
- Ventilation**—Considerations as to, with reference to dungeons, iv. 10.
- Arrangements conducive to, in the Panopticon Penitentiary, iv. 43, 162.
- Considerations as to the shape of building best suited for, iv. 61-62.
- Union of, with warmth, by introduction and diffusion of heated air, iv. 110-118.
- Means of, for industry-houses, viii. 375.
- Veracity**—Importance of inculcating, ii. 210.
- Evil effects of undermining the principle of, ii. 263.
- Dependence of, on motives, vi. 258.
- Any motive may serve as a cause of, vi. 259-260.
- crimes that may render that of a witness questionable, vii. 60-61.
- Verb**—Not the same as a copula in a logical proposition, viii. 189.
- Substantive—Invention of the, a high effort of abstraction, viii. 326.
- Substantive—Omission of, in Legislative Composition, iii. 330 n *.
- Verbs** as a branch of Universal Grammar, viii. 348-355 ;—
- Nature of, viii. 348-349. Definition, 348. All verbs except the substantive verb are complex, involving the signification of an adjective, ib. Modifications—difference in respect of time, and between absoluteness and conditionality, 348-349. Modified and unmodified, 349.
- Person, in the grammar of—Meaning of the term, viii. 349.
- Number, in the grammar of—Meaning of the term, viii. 349.
- Tenses or designations of time in, viii. 349-353. Description how out of the three simple tenses, present, past, and future, ten compound arise, 349-350. Absoluteness and conditionality double the number, 350. Continuance of action, of which the English language susceptible, while the French is not, ib. Division of the future into the simply predicative, and the dominative—will and shall, 350-351. Results to be expressed are, either that the future is dependent on the will of the speaker or is not so, 351. Thus the necessity for both futures expressible in each person, ib. Different signs, however, to different persons, ib. Case where dependent on speakers' will, examined, 351-352. Case where not dependent on will, 352. Should and would, 353.
- Moods of, viii. 353-355. Absolute or conditional—corresponding to indicative and potential, ib. Modes of conditionality enumerated, ib. The imperative or optative, and in some languages, the casual, reckoned as moods, 354. Are states of the will, and improperly ranked with the moods, 354-355.
- Voices of, viii. 355. Applicable to transitive verbs and complex propositions, ib.

Verbs—Participles of, are adjectives, viii. 355.

— No determinate information conveyable without the use of, viii. 81.

— Every one but that of existence (to be) conveys the name of some quality, viii. 97 n.

— Principle of the division of, into transitive and intransitive, viii. 228 n.

— How far an exposition of, capable of being given by representation, between parties having no common language, viii. 244.

— Rules for avoiding ambiguity in the use of, viii. 313-316.

— Verbal substantives with auxiliaries preferred to, by the Author, as clearer, viii. 315-316; x. 569; xi. 72.

— Preference of substantives with auxiliaries to, in legislative composition, iii. 267-268.

— Inflections expressive of gender an encumbrance to, viii. 323.

— Account of the operations in regard to the modifications of, which are expressed by the term conjugates, viii. 323-324.

— Whether prior or posterior to nouns in the order of invention? viii. 327.

— Irregular. Fragments of language anterior to the use of systematic inflection, viii. 327.

— Time, and absoluteness or conditionality, essential to the nature of, viii. 343.

— Auxiliary. Proposed addition to, xi. 72.

— Auxiliary, that may be used with substantives—Employment of, iii. 268.

Verbal contradictions distinguished from impossible facts, vii. 79.

— evidence excluded in the proof of certain contracts, vi. 128-134. *See* Oral evidence; Exclusion.

— substantives—Preference of, to verbs, as a less ambiguous medium, viii. 315-316.

Verdict of jury—Its being the opinion of the jury, dependent on the clearness of the law, ii. 125.

— almost always involves a decision on points of law, v. 462.

— influenced by judge's charge, vi. 418.

— Forced unanimity in, vi. 273-275, 314.

— in criminal cases—not admitted as evidence in civil, vii. 170.

— of *non liquet* unknown in England, ii. 157.

— Special. Application of unanimity to, ii. 157.

— *See* Jury.

Vergennes—Viscount de—Notice of, x. 125-126.

Verification to transcript—what authentication is to original, vii. 141.

Verity—Definition of, vi. 249.

— confounded with authenticity by Gilbert, vi. 184.

Vernon—Mr—a visiter in Bentham's family, x. 17.

Vernon—Mrs—an acquaintance of Bentham's family, x. 46.

Virtue—George—Authentication of a portrait of Milton, by, x. 52-53.

Vespasian—Miraculous cures attributed to, vii. 93.

Vested rights—Rationale of, in the Non-disappointment principle, iii. 388 n*.

— — Whatever rationality there is in, better expressed by fixed expectancy, v. 277.

Vesture—Incongruity of, as one of the predicaments, viii. 235-236.

Veterinary surgery—Professorship of, in central towns, ii. 257.

— — Peculiar source of instruction on, in a system of Pauper management, viii. 427-428.

— School for. Principle of the Institution of, iii. 41 n.

Veto—Royal, on legislative measures. Not a direct veto on the will of the people, iv. 308-309.

— The Irish Catholic—Letter to Sir J. C. Hobhouse on, x. 523-525.

Vexation—Amount and nature of, in Penal procedure, ii. 17.

— *See* Collateral Evils.

— Avoidance of, an alleged ground for exclusion of evidence, vii. 337-338.

— Exclusion of evidence on the ground of, considered, vi. 92-98; vii. 345-353. Modifications of which it is susceptible, ib.

— as a ground of exclusion of evidence—Arrangements of English law connected with, vii. 352-353.

— merely arising from the tendency of the testimony to impose an obligation, how far ground of exclusion, vii. 347-350.

— by self-inculpation—Avoidance of, no good ground for excluding testimony, vi. 106-109; vii. 441-444.

— by self-inculpation—Enumeration of the sorts of evidence improperly excluded on the ground of, vii. 444-445.

— to judge—how far ground for exclusion of evidence, vii. 350-352.

— and danger of deception united—View of the cases in which evidence has been improperly excluded on the ground of, vii. 487 *et seq.* (viz. Book IX., Part V. of Rationale of Evidence.)

— distinguished from oppression, viii. 558.

— Juridical. Punishment of, in Constitutional Code, ix. 491.

Vibration of causes from court to court, vii. 236-239.

— — — a grievance charged in the Petition for justice, v. 473-476.

Vicarious punishments, i. 479-480.

Vice—Dependence of the idea of, on pains and pleasures, i. 211.

— The English system of judicature, a school of, vii. 339.

- Vices introduced into the Technical system by the fee-gathering principle, vii. 214-225. *See* Fee-gathering.
- Vice-Chancellor's Court—On the proposed absorption of, in the Chancery, v. 553-563.
- Vicinage of a jury—Proper kind of, x. 71.
- Vicious—Proper use of, as an attributive, i. 216-217.
- View—General, of a complete Code of Laws, iii. 155-210.
- View—Summary, of the topics that might be expected to be handled in a work on evidence, vi. 213-214.
- Vilification—Nature of, i. 115-116.
- Villains—Inquiry whether they ever held the Franchise, iii. 460 n.
- Villanova—Jacobo. The Panopticon translated into Spanish by, xi. 19-20.
- Villion—Francis—Bentham's intercourse with, x. 131-133.
- Vincent—Dr, noticed, x. 412.
- Vindictive principle—Origin of the, in punishment, x. 69-70.
- Vindictive satisfaction—Nature and operation of, i. 372, 382-383.
- Vindictiveness as designative of a motive, i. 203.
- Viner—Charles, noticed, vii. 458.
- Violation of reputation—How far danger of, justifies restriction of judicial publicity, vi. 364-367.
- Violence—Effect of, in destroying industry, i. 310-311.
- Violence—Popular, means of protecting prisons and other buildings from, by their locality and construction, iv. 105-109.
- Virginia—(the State)—Declaration of Rights of, animadverted on, i. 154.
- Illegality of the Charter to, by James I., iv. 260.
- Adoption of the Penitentiary system in, iv. 213.
- Virtual universality of suffrage distinguished from actual, iii. 452, 459-476. *See* Universality.
- Virtue—National. Opulence of the clergy an impediment to, ii. 468-469.
- Dependence of the idea of, on pains and pleasures, i. 211.
- Notice of ascetic doubts of the existence of, ii. 230.
- How far it can be made the object of distinct reward, ii. 230-233.
- Public, the kind of that is to be expected in the body of the people, x. 72.
- Virtues—Classification of the, x. 585.
- Virtuous—Proper use of the term as an appellative, i. 216-217.
- Vis inertiae*—Question, whether it be not active resistance created by elasticity? viii. 129.
- Visible-signal principle—In the management of the Chrestomathic school, viii. 53.
- Visionary—Causes of employment of the expression against radical reform, iii. 601.
- Visitation—A barbarous expression when used in reference to punishment, ix. 24.
- Visitation system—The adoption of in the Chrestomathic school, viii. 47-48.
- Visitative or Inspective function of Ministers in the Constitutional Code, ix. 257-260. *See* Ministers.
- of Justice Minister in the Constitutional Code, ix. 598-599. *See* Justice Minister.
- Visitors—Rules for admission of, to legislative bodies, ii. 326-327.
- of prisons—Rotation of, and other beneficiary arrangements, iv. 25.
- of prisons—Reduction of trouble to, in the Panopticon system, iv. 45-46.
- Visitors' gallery in courts of justice, ii. 34.
- Vital statistics—Importance of, as data for remedial measures in favour of the working classes, viii. 410-411.
- Men to be served by registers of, ix. 627.
- Vitiation of contracts. Proper causes of, i. 331-333.
- Rules for preventing and discovering, in records, vi. 74-75.
- Vituperation of public functionaries—No punishment for, ii. 279.
- should be distinguished from defamation in Libel law, viii. 510-511.
- employed against Reformers to protect abuses, v. 96.
- Vituperative Personalities—Fallacies of, ii. 413-418. Enumeration, 413-414. Design—to draw attention from the measure to the man, 414. Irrelevance and inconclusiveness, ib. Imputations of bad design, 414-415. Of bad character, 415. Of bad motive, 415-416. Of inconsistency, 416. Of suspicious connexions, ib. Of having the same denomination as men supposed at some time to have done evil, 416-417. Causes of the prevalence of these fallacies—ignorance, imbecility, and indolence, 417-418.
- Viva voce* testimony. *See* Oral.
- Vivacity of a conception, as distinct from its correctness, vi. 251-252.
- Vocabulary—Technical. Necessity of adapting, to the progress of discovery, iii. 271.
- Voice, in the Grammar of verbs, analyzed, viii. 355.
- Void—Declarations that certain acts of the Legislature shall be, considered, i. 154.
- Inapplicability of the term to the proceedings of a Legislature, i. 288-289.
- Use of the term, to characterize laws altering previous laws, ii. 403.
- Voiding contracts for want of formalities, vi. 517-525. *See* Formalities.
- Voire dire*—Examination on, vii. 404.

Voltaire—Perusal of the works of, by Bentham when a boy, x. 11.
 — his *White Bull*—Statements as to translation of, x. 82-83.
 — *Memoirs of*—Correspondence as to, x. 136.
 — noticed or quoted, i. 148 n *, 316, 562; ii. 197, 218; iv. 431; vi. 253 n; viii. 313; x. 443, 454.
Voluntary and involuntary—Ambiguity of the words, i. 40 n ¶.
 — evidence distinguished from involuntary, vi. 218.
 — prosecutors. Provision for, in the Plan of Judicial Establishment proposed for France, iv. 385-387. *See* Prosecutors.
Volunteer Association—The Irish. Advantages of democratic ascendancy illustrated in the history of, iii. 613-620.
Volunteers, or radical branch of the Defensive force—Provisions as to, in Constitutional Code, ix. 343-348. *See* Defensive Force.
Voracity, voraciousness, &c.—Motives of, i. 197.
Votes in Legislative Assemblies—Publicity as to, ii. 314.
 — — — Reasons why they should not be taken till after the debate, ii. 342-346.
 — — — Reasons for taking them simultaneously, ii. 349-350.
 — — — Rules as to, ii. 334.
 — — — Method of taking, in the Provincial Assemblies of France, censured, ii. 337-341.
 — — — General observations on, ii. 367.
 — — — Open and secret, considered, ii. 367-370. Reasons for publicity in the general case, 367-368. Effect of the influence of individuals justificative of secrecy, 368-370.
 — — — Summary, and Distinct, considered, ii. 368-372.
 — — — Neuter, proposed, ii. 372.
Votes in Parliament—Publication of the, ii. 316.
 — — — Proposal to exclude placemen from the privilege of giving, iii. 490-495, 541-542.
 — — — Ready means of taking, iii. 545.
Vote-making certificate. Form of, and Provisions as to, in Radical Reform Bill, iii. 564-565.
Voter—form of attesting his qualification as a reader, iii. 565.
Voters—Analysis of the corrupting influences that may be brought to bear on, iii. 476-482.
 — Method of certifying and registering, for the purposes of Radical Reform Bill, iii. 575-577.
Voting—Secret—A Plan for, applicable to a board, or other small body, ix. 274-275.
 — Method of, in terms of Radical Reform Bill, iii. 577-579.

Voting—Freedom of, including secrecy, as an element of reform, iii. 453-454.
 — at Elections—Apparatus for, in Radical Reform Bill, iii. 571-574.
Voting—Secret, at Elections. *See* Ballot : Secrecy of Suffrage.
Voucher—Nature of a, ii. 182.
Vouchers—Discussion of, in account-taking judicatories, ii. 182.
Vows—Enforcement of, one of the forms of priestcraft, v. 222-223.
 — or Promissory oaths—The Abuses supported through, ii. 408-410.
Wrillon—Pierre—a foreign merchant—Bentham's acquaintance with, x. 53.
Vulgar Errors—Relation of Fallacies to, ii. 380.
 — — Sir Thomas Browne's noticed, ii. 380 n.

W

Wager—how far the law should interfere with, when it gives an interest in crime, i. 547-548.
 — How it may be the means of converting a benefit to a criminal purpose, ix. 19-20.
 — shows that persuasion admits of degrees, vi. 223.
 — might be made the means of vexatiously exposing secrets, were there no restriction on enforcement of evidence, vii. 348.
 — witness not excluded by laying, on the cause, vii. 403-404.
 — Fictitious, for the purpose of obtaining decision on point of fact, vi. 5 n, 488.
Wager of Law—nature of the proceeding, vi. 286; vii. 70, 549-551.
 — — Abolished, vi. 381 note 3, 462; vii. 70 n †.
 — — Illustration of barbarous opinions on the efficacy of an oath, v. 515-516.
Wages (of service)—Nature of, ii. 233-234.
 — Perpetration of injury for, an aggravation, i. 165-168.
 — Considerations as to the possibility of hoarding out of, and the utility of savings' banks, viii. 407-417.
 — fixed by relation of capital to number of labourers, iii. 61.
 — Inefficacy of attempts to fix a rate of, by law, iii. 66.
 — The fixing of, is equivalent to a prohibition on employing those whose labour is not worth the sum fixed, viii. 442.
 — Beneficial influence on, of a central system for communication between employers and employed, viii. 399-400.
 — Effects of machinery on, iii. 39, 67-68.
 — Inadequacy of a system of poor-relief by supplementary allowance to, viii. 441-444. Pitt's proposed plan, 441-442.

- Would include all agricultural wages, 442. Not so maleficent as fixation of wages, *ib.* But puts the idle on a par with the industrious, 442-443. Impossible to act on distinctions in favour of meritorious efforts, 443. Impossibility of defining a full rate of wages, 443-444.
- Wagons ascending and descending—Application to, of economy of the sources of motion, viii. 144.
- Waiting boxes, in the architectural arrangements of the Constitutional Code, for enabling the public to have audience with officials—Description of, ix. 328-329.
- Wakefield—Illis notice of the author, iii. 481 n.
- Walcheren Expedition—The, alluded to, v. 154 n, 306.
- Waldegrave—Lord—Notice of, x. 116.
- Waldegrave—The Ladies—Notice of, x. 116.
- Waldo—Mrs—A visiter of the Bentham's, x. 14.
- Wales—New South. *See* New South Wales.
- Walker—Peter—Communicates vote *of thanks of Householdors of Westminster, x. 499.
- Wallace—James, Attorney-general—notice of, x. 131.
- Walpole—Sir Robert—unpopularity of, for keeping the peace, ii. 555 n, 559.
- Walpole—Horace. The Political exposures in the Memoirs of, alluded to, i. 240.
- Want—Synonyms to the word, i. 208.
- War—Motives leading to, i. 52.
- The uses and just principles of, ii. 538-539.
 - The Fine Arts opposed to, ii. 254.
 - Considered as Adjective International law, ii. 539.
 - Enumeration of cautionary means of preventing, ii. 540.
 - Considered in respect of its causes and consequences, ii. 544-546. Mischief on a large scale, 544. Inducements enumerated, *ib.* Absence of a controlling power over nations, *ib.* Enumeration of principal occasions of war, and means of prevention, 544-545. Wars divided into *bonâ fide* wars of passion, and wars of ambition, rapine, &c., 545. Remedies, *ib.* In what cases the recourse to hostilities justifiable, *ib.* Appointment of war-residents as a palliative, suggested, 545-546.
 - The greatest crime of a minister, ii. 556.
 - Means of avoidance of, in a Plan for a universal and perpetual peace, ii. 546-560.
 - Facility which ministers have for creating without being punishable, ii. 555-556.
 - For the purpose of conquest. Of use only to despots—prejudicial to a free people, ii. 557.
 - Popularity of, ii. 559.
 - Effect of colonies in creating, ii. 547-548.
 - Tendency which secrecy in negotiations has to promote, ii. 554-560. *See* Secrecy.
- War for the sake of trade—Absurdity of, ii. 557-558.
- Money spent on luxuries the resource for, iii. 37-38 and n.
 - Compensation to individuals for the injuries occasioned by, iii. 44 n.
 - Pressure of Taxation, and other evils caused by, in Britain, iii. 100.
 - Viewed as a species of 'procedure, iii. 200-201.
 - The national debt a preservative against, iii. 611.
 - a matter in' which monarchs have not enmity, but rivalry, their people being the victims in the game, ix. 129-130.
 - Influence of, in preventing nations from establishing good systems of government, ix. 58.
 - Untenability of the Quakers' objection to, x. 581.
 - "Honour," and "Glory." How employed in discussions as to, ii. 437 ; iv. 439.
 - an instrument of corruption, ix. 71.
 - Sinister interests in favour of, i. 547 ; ii. 139, 209, 556 ; iii. 439, 611 ; v. 280 ; vi. 41 n, 78 n, 496-497.
 - Sinister interest created in favour of, by the Droits of the Admiralty, ix. 21.
 - The American. Effect of, on the value of land, iii. 9-10.
 - Civil. Difference between the manner in which it is carried on in a monarchy, and in a democracy, ix. 38.
 - Civil. The occasioning, among the most mischievous of offences, vii. 116.
 - Art of. Why necessarily excluded from the Chrestomathic system of Education, viii. 43.
 - Laws of, as a division of the International Code, iii. 200-201.
- War Loans—Advantage of the project of Annuity notes in regard to, iii. 131-132.
- "War in Disguise"—reference to a pamphlet so named, vi. 496-497.
- Wars—Causes of, in the *bonâ fide* offences of sovereigns, ii. 539-540.
- Unjust. The expense of, part of the profuseness incident to a monarchy, ix. 32.
- Warburton—Bishop, elevating reason above authority, ii. 391 n.
- — noticed, x. 65, 143, 412.
- Ward—Responsibility of Guardian for, in regard to reparation for offences, i. 385.
- Wards—Principles of the Guardianship of, i. 347-348.
- Conduct of Guardians to, in litigation, to be under inspection of Eleemosynary Advocate, by Constitutional Code, ix. 578-579.
 - of Chancery—Practice as to, animadverted on, iii. 386-387 n.
- Wardship—Nature of, i. 124-126.
- Offences to which the condition of, is exposed, i. 126-127.

Warming—Plan of, for Panopticon Penitentiary House, iv. 96.
 — Method of uniting with ventilation, in a Penitentiary, iv. 110-118.
Warnings to prevent under and over valuation of circumstantial evidence, vii. 67.
Warrant of arrestation—Conditions necessary to justify the issuing of, ii. 117.
 — Criminal, circumstances in which granted, vi. 471.
 — of attorney, in effect and substance a mere contract, vi. 480-481.
 — from Master in Chancery—Imposition of fees by means of, vii. 217.
Warrington—Visit to, by Bentham in his youth, x. 46.
Warsaw—Bentham's visit to, on his return from Russia, x. 180.
 — Convict system in, i. 439.
Warwick—Lord—Case of, vii. 435 n *.
Warwickshire—Address to the Jurymen of, in the King against Edmonds, v. 250.
Washington made a citizen of France, x. 281.
 — noticed, ix. 361 n; x. 108, 316.
Waste—Detrimental use of the expression in English law, v. 404.
 — Injurious—Specimen of a section as to, in the Penal Code, iii. 175-176.
 — of public money, peculiar to limited monarchies, ix. 28-29.
 — Liberality at the public expense is, ix. 267.
Waste-book—an incongruous term in account-keeping, substitutes proposed, v. 385.
Water as a source of motion, viii. 132-133.
 — Means of supplying the Panopticon Penitentiary with, iv. 110.
 — How the land left bare by the retreat of, to be appropriated, i. 328.
 — Authority of the Health Minister as to supply of, in the Constitutional Code, ix. 444.
Waterloo—Effects of the battle of, on the liberties of Europe, iii. 436.
Watkins—The Rev. Mr—notice of, x. 124.
Watts—Isaac—Character of his work on Logic, viii. 113.
 — — His logic characterized as old women's logic, x. 37.
 — — His vague notions on logical division, viii. 114-115.
 — — Illustration from, showing that he did not understand the nature of exhaustive division, viii. 108 n.
Watts—Dr Robert—Letter to, and information from, as to prices of domestic articles, x. 377-378.
Way—Suits as to rights of, reckoned as complex, ii. 81.
Weakness—Intellectual. A cause of misjudgment, &c., i. 217-218.
Wealth—The pleasures of, i. 18.

Wealth—Influence of, on sensibility, i. 25-26.
 — Motive corresponding to the pleasures of, i. 50.
 — Genera of offences against, i. 133-134 n.
 — pleasures and pains of, with the correspondent interest and motives, i. 198.
 — Love of—Character given to the motive, i. 213-219.
 — Motives which tend to the increase of, i. 304.
 — Acquisition of, productive of more happiness than mere possession, i. 305.
 — The proportion which happiness bears to the extent of possessed, considered, i. 304-305.
 — Proportion between the happiness by the gain of, and the pain by the loss, i. 305-307.
 — created by the security afforded by the laws, i. 309.
 — Sensibility to the punishment of the moral sanction, as affected by, i. 457.
 — Costs to be measured by the extent of, ii. 112-113.
 — Ratio of felicity to the amount of, ii. 271-272.
 — Influence of on elections, ii. 312.
 — Sieyès' doctrine of the liberty to dispose of, criticised, ii. 532-533.
 — The causes of, iii. 36.
 — Subjects comprehended under the term, iii. 37-38. Articles of subsistence, instruments of defence, and instruments of enjoyment, ib. A modification found in that one of the heads, to which it is in the greatest degree conducive, ib. Operation of Exchange in converting one to another, ib. Stock of enjoyment presupposes subsistence, ib. Degree of wealth as degree of this stock, ib. Means of defence as the amount of this stock, 38. Luxury a concomitant of opulence, ib.
 — Sources of the matter of, iii. 38.
 — Method of increasing the matter of, iii. 38-39. Discovery of raw material or places producing it, 38. Extraction, 38-39. Considerations as to labour, ib. Effects of machinery, ib.
 — Circumstances which increase or decrease the quantity of, iii. 39-40.
 — Labour the source of, iii. 45.
 — Relation of money to, iii. 45 n *.
 — Means of augmenting the amount of, iii. 66-72. Augmenting efficacy of labour, 66-68. Increasing number of labourers, 68. More advantageous employment of capital, 68-69. Increasing the mass of capital, 69-70. Trade, 70-72.
 — Operation of a sinking fund on the production of, iii. 80-82.
 — Reference of increase of, to that of the currency, iii. 141.
 — Examination of the relation of happiness

- to, in connexion with the amount possessed, parted with, or gained, iii. 228-230.
- Wealth**—How far it reduces the inducements to perseverance, iv. 374-375.
- as disprobative of fraudulent offences, vii. 62.
 - Universality of the desire for, vii. 54.
 - Existence of in a country, dependent on security for life and property, viii. 597-598.
 - The amount of felicity does not rise with the arithmetical ratio of, ix. 15-17.
 - Copnexion between power and, ix. 48.
 - Aptitude for political power sinks instead of rising with, ix. 110-113, 193, 292-293.
- Wealth**—National and public—Offences against the, i. 101-103.
- Offences against—Classification of, in Penal Code, iii. 170.
 - Efforts of individuals more conducive to, than those of the Legislature, iii. 33-34.
 - Wherein it consists, and effect of the voluntary operations of individuals on it, iii. 40-41.
 - Impolicy of Government attempting to increase, by interference with trade, iii. 43-44.
 - Manner in which Government justifiable in interfering with the natural course of, iii. 41-42. Facilities, *e. g.*, corporations, &c., 41. Conversions of what would be used as enjoyment to subsistence or defence, 41-42. Navigation act, and bounties on fisheries, examples, 42.
- Wealthy**—Imperfect incidence of a pecuniary punishment on the, i. 167.
- Weapons**—How far the sale of, might be regulated, i. 560.
- Grounds on which the sale of, prohibited, i. 332-333.
- Weary**—Sir Clement, noticed, iv. 267.
- Wedderburn**—Alexander, Earl of Rosslyn—Opinion of, on the greatest-happiness principle, i. 3 n, 245-246.
- His opinion on the greatest-happiness principle accounted for, i. 246 ; ii. 463 n.
 - Author's interview with, i. 246.
 - Description of, and account of his attack on Franklin at the Council-board, x. 59-60.
 - casually noticed, iv. 488 ; vi. 390 ; x. 94, 295, 564.
- Wedgeood**—Copying machine of, vi. 576 n.
- Weighing of evidence**—Code of instructions as to, vi. 118-119, 151-175 ; vii. 563-591. See Cautionary Instructions.
- Weight**—Utility of establishing standards of, i. 555.
- of circumstantial evidence—Considerations as to, vii. 66-67.
- Weights**—False. Guarding the people against, i. 553.
- Weights and measures**—Regulations regarding, as a branch of the Civil Code, iii. 177.
- Wellbeing**—the object of every branch of art, and the subject of every branch of science, vii. 82-83. See Eudæmonics.
- The common tie between art and art, which Cicero sought for, viii. 98-99 n.
 - the object both of Logic and of Ethics, viii. 222, 231-232.
 - Relation to, as a bond of connexion for the Arts and Sciences, viii. 241.
- Wellesley**—The Marquis. Attempt of, to form an administration, x. 468.
- Wellesley**—The Hon. W. L. The case of, iii. 337 n, 387 n.
- Wellington**—Duke of. Tendency to despotism of the services of, iii. 436.
- Letter to, urging the patronage of Law Reform—examples of brevity and efficacy alluded to in the Military Code, xi. 9-12.
 - Letters to, on his duel with Lord Winchelsea, xi. 12-15.
 - Casual notices of, iv. 432 ; v. 586, x. 484, 485 ; xi. 28, 49.
- Welsh circuits**—Delays in the, vii. 220-221.
- judges—The emoluments and work of, compared, iv. 379 n †.
- Werner**—an observer and inventive methodizer, viii. 76.
- West India slaves**—Barbarous punishment of, i. 443-444.
- Western Fisheries**—Letter to Dr Anderson on his projects regarding the, x. 127-129.
- Westminster**—Householders of—Vote of thanks from, to Bentham, x. 499.
- Election in, an illustration of the practicability of virtually Universal Suffrage, iii. 472-474 n.
 - Plan for new modelling the magistracy of, x. 336-338.
- Westminster school**—Bentham's experience of, x. 27, 30.
- Fagging system at, censured, x. 34.
 - Accommodation and expense of, viii. 56.
- Westminster Review**—Article in, by Bentham, on Humphrey's Real Property Code, extracted, v. 387-416.
- Note by Editor of, on the Commentary on Mr Humphrey's Outline of a Real Property Code, v. 388.
- Westmoreland**—Earl of, (the tenth) mentioned in the Panopticon controversy, xi. 104.
- Mention of, v. 315.
- Wharton**—Philip, Duke of, noticed, iv. 373.
- Wheatley**—Mr.—The Political economy of, characterized, x. 413.
- Wheaton**—Henry—Notice of, xi. 36.
- Whetford**—Case of, cited, vii. 431.

Whigs—their invention of "The original contract," i. 242-243.

— Special Juries introduced by, ii. 138.

— in what they differ from the Tories, ii. 443.

— Their motives in producing the Revolution, ii. 447.

— Their employment of the expression, "measures not men," ii. 470.

— Anticipation of the tactic of, as to Parliamentary Reform, iii. 486.

— Influencing motives of the, in regard to Reform, iii. 527.

— Characteristics of the, iii. 527.

— The—Examination of the interests and corresponding motives of, in respect to Reform, iii. 528-529.

— The opposition of, to the exclusion of placemen's votes, and to constancy of attendance in Parliament, iii. 531-532.

— Consideration as to the position of, and whether they may be driven to the support of the universal interest, iii. 535.

— Shape that the arguments of, against Reform assume, iii. 600.

— assault the Tories with ammunition borrowed from the Radicals, iv. 423-424.

— The nature of the reforms patronised by, and their reasons for disliking the ballot, in a letter to O'Connell, x. 598-599.

— Casual allusions to, ii. 443, 562-563, 590 n; viii. 469; ix. 139; x. 120, 187, 549, 587; xi. 61.

Whig Reform—Characteristic of, iii. 582 n.

Whippers-in—Operations of, in Parliament, iii. 501-502.

Whipping as a punishment, i. 413, 414-415.

Whishaw—James—Letter from, on reversals on appeal in the House of Lords, x. 431.

— Allusion to, x. 533.

Whishaw—John, arbiter on the compensation to Bentham for his losses by the Panopticon, xi. 164.

Whitbread—Samuel, noticed, v. 80.

— His remarks on the system of packing special juries, v. 157 n, 158 n, 160-162.

— Allusion to, as a supporter of Queen Caroline, x. 474.

— Opinions of, on Parliamentary Reform, iii. 450 n.

White—Mr, Solicitor of the Treasury—Notice of, x. 51.

White—Mr—mention of, xi. 114, 138.

White—Blanco—Correspondence with, on the Liberty of the Press, and the affairs of Spain, x. 456-457.

White—Mrs—A visiter of the Benthams, x. 14.

White Bull—Statement as to translation of the, x. 82-83.

White Conduit House—Bentham's visit to, when a boy, x. 34-35.

Whitehead—Paul—Editor of the Life of Constantia Philips, x. 35.

Whitgift—His claim of infallibility for the Church, v. 228.

Whitmore—Commissioner—Non attendance of, v. 364-365.

Why—Meaning of the adverb, vi. 237 n †.

Wickham—Under secretary—notice of, x. 285.

Widows—System of Parochial relief to, according to the number of children—Difficulties in the way of, viii. 444-446.

— Means of laying up provision for, among the working classes, viii. 409-417. *See* Frugality Banks.

— Suggestions for boarding the children of, in Industry-houses, viii. 423.

Wife—Origin of husband's authority over, i. 121 n †, 129.

— Offences which may affect the condition of, i. 131.

— Condition of—Forfeiture of as a punishment, i. 471-472.

— Responsibility of husband for, in regard to reparation for offences, i. 386.

— Absence of remedy by, for husband's cruelty, ii. 178.

— Examination of, on alienating land with concurrence of her husband, vi. 375.

— Evidence of, not taken in prosecution for bigamy, vii. 483 n.

— Influence which the position of, in relation to her husband, may have on testimony, vii. 577-581.

— and husband—the exclusion of the testimony of, in regard to each other, considered, vii. 480-486. *See* Husband.

— and husband. Principles of the Civil Code regarding, i. 349-358. *See* Marriage.

Wigs—Formerly a sign of the distinction of ranks, x. 15.

Wilberforce—William—Circumstances under which he lost his seat for Yorkshire, iii. 480 n.

— Letter from Bentham to, recommending him to offer himself as a pacific ambassador to France, with the answer, x. 315-319.

— Letter to, on the Globe Insurance Company, x. 335.

— Letter from, on Bentham's disappointments in regard to the Panopticon, and the proposal of an exposure of the ministerial conduct as to it, x. 391-395.

— His support of Bentham's views as to the Panopticon, xi. 105-106.

— Letters to, on the Panopticon, xi. 113-114, 118, 145-146.

— Letters from, on the Panopticon, xi. 115-116, 146-147.

— casually noticed, iii. 495; v. 189; x. 41, 281, 293, 385, 571; xi. 125, 140, 142.

Wild—Causes of the employment of the word, to characterize Radical Reform, iii. 601.

Wilkes—John—The expulsion of, considered, iii. 591 n. ‡.

— *z*. Farnes—Case of, cited, v. 141 n.

— The verdict obtained by, against Lord Halifax, alluded to, i. 394 n.

— Notices of, and of his dispute with George III., x. 65-66.

— Outlawry of, noticed, vii. 254 n.

— Charge of altering the record in the case of, vii. 260.

— Casual allusions to, iii. 468 n, 517; v. 299; x. 121, 313.

Wilkins—Bishop. His Essay towards a real character and a philosophical language—Character of, and quotation from, as a specimen of Technology, viii. 150-155.

Will—Motives to the, distinguished from those to the Understanding, i. 208.

— Indirect means of preventing the, to commit offences, i. 538-561. Problems enumerated, 538-539. To divert it from dangerous desires to those more useful, 539-541. Arrangements for desires being satisfied with least prejudice, 541-546. Avoid furnishing encouragements to crimes, 546-548. To augment the responsibility with the amount of temptation, 548. To diminish sensibility with regard to temptation, 548-549. To strengthen the impression of punishment on the imagination, 549-550. To facilitate the discovery of offences committed, 550-556. To prevent, by giving many individuals an interest in prevention, 556. To facilitate the recognition, &c, of individuals, 557. Increasing difficulties of escape, 558. Diminishing uncertainty with regard to procedure and punishment, 558-559. To prohibit accessory offences for prevention of their principals, 559-561.

— Appropriate—Uses of consideration of, as distinguished from appropriate power, iii. 293.

— A logic of the, a desideratum, v. 270.

— The power of, over opinion, vii. 108.

— Connexion of, with mendacity and veracity, vi. 248-249.

— The, as a source of muscular motion, viii. 134.

— General—Fallacy of saying that the Law is the expression of, ii. 507.

— Influence of, on will, as distinguished from that of understanding on understanding, ii. 439.

— Influence of, on will, in relation to the case of jurymen, v. 68.

Will and shall—Inquiry into the reciprocal use of, viii. 350-353. See Verbs.

Wills (or Testaments)—Equality promotable by legal limitation of distributions in, i. 312-313.

— Advantage of the power of making, Vol. XI.

as supplementary to legislation, i. 336-338.

Wills—Grounds of nullity of, i. 338.

— Deathbed—Grounds for supporting, i. 338.

— Disability to make, involved in excommunication, i. 515.

— to be allowed latitude in regard to solemnities, i. 551.

— should be registered, i. 552.

— Suits as to, ranked as complex, ii. 81.

— Distributive seeking suits arising out of, ii. 86.

— Description of promulgation paper applicable to, vi. 67.

— comprisable under the term contract, vi. 62 n.

— Effect of nullification of, for want of formalities, vi. 65.

— Nature of the documents called, vi. 66-67, 508.

— Last—the sort of deed to which an act of recognition peculiarly applies, vi. 516 n. †.

Wills—Formalities of, vi. 530-551;—

— — — their utility, vi. 530-532. Points of difference from other deeds, 530-531. Reasons why there should be no disqualification to make will on death-bed, 531-232.

— — — Mischiefs of peremptory formalities in the case of, vi. 532-535. Give facilities to force and fraud, from the ease with which formalities may be interfered with, 532. Absurdity of one sort of formality for real, another for personal property, 533. Alteration in the law, 533 n. *. Genuine wills often informal, spurious ones made formal, 534. Frustration of fair will more mischievous than giving effect to spurious, 534-535.

— — — Use of autography in, and recommendations in relation to it, vi. 535-537.

— — — attestation, vi. 537-541. Advantages of autography—cases in which it is not practicable, rendering recourse to other methods necessary, 537-538. Use of two witnesses as an impediment to forgery, 538-539. Absurdity of excluding evidence of witnesses merely percipient, 539-540. How far it should be requisite that the attestation should be simultaneous, 540-541.

— — — in wills of necessity as distinguished from regular, vi. 541-542. Enumeration of circumstances which may explain absence of formalities, ib.

— — — Aberrations of English law in regard to, and examination of statute of frauds, vi. 542-543. Comparison with what required as to other deeds, 542-543. Fictitious distinctions between real and personal, 543-545. Nullification instead of suspicion, 545. Examination of the

- rules as to nuncupative, 546-547. Witnesses excluded on score of interest, 547. Recourse to the removal of legatee's interest, 548. Opens a door to forgery, 548-549. Unapt nomenclature, delivery, publication, execution, 549-551.
- Willes—Mr Justice, noticed, i. 248; v. 90 n *; ix. 473.
- William the Conqueror, noticed, vii. 196.
- William II. of England—Illustrations of intentionality from the death of, i. 42, 43-44.
- William III.—Opinion of the character of, vii. 527.
- — — Act of Parliament of, against treason, made for the protection of the traitors of his reign, vii. 527-528.
- — — casually noticed, v. 286 n; viii. 557.
- William IV. Testimony to the character of, iv. 449-450.
- Williams—J.—Prosecution of, for libel, i. 466 n.
- Williams—David, made citizen of France, x. 281.
- Wilmot—Sir John Eardley, noticed, x. 117, 186.
- Wilson—George Letters from, x. 131, 135-136, 171, 212, 387.
- — — Account of, x. 133-134.
- — — Letter from, to Bentham in Russia
- — — Public news, Eden's defection, Treaty with France, &c., Remarks on Paley's Moral and Political Philosophy, and its coincidence with Bentham's unpublished work, x. 163-164.
- — — Letter from, to Bentham, in Russia
- — — difficulty of publishing works while the author at a distance, active state of the nation, progress of political economy, poor-laws, customs' consolidation, grievances of Dissenters, Adam Smith, x. 172-174.
- — — Letter from, on the Introduction to the Penal Code, x. 194-195.
- — — Letter from, with opinion on the work on Political Tactics, x. 199-200.
- — — Letter from, on Gregory's book on Liberty and Necessity, and Mirabeau's Letters to his Commettans, x. 215-216.
- — — Death of, x. 487.
- — — Letters to, x. 89-96, 98-110, 112-114, 165-171, 174, 175-177, 200-201, 216-247, 387.
- — — Notices of, i. 247; x. 127, 186, 249, 263, 287, 362, 429, 449; xi. 81.
- Wilson—Judge, of Pennsylvania, iv. 469.
- Wilson—Robert—Case of, cited, vi. 55.
- Wilson—Sir Robert, noticed, i. 250.
- Winchelsea—Lord—Letters to the Duke of Wellington on his duel with, xi. 12-15.
- Windham—Sir William (jun.)—His argument against Reform, ii. 453 n.
- — — noticed, ii. 582.
- Windsor—Mr—Omission of cost of pipes in his estimate of the cost of gas, v. 422-423.
- Wine Prohibition of by Mahomet, noticed, i. 535.
- Wire—Mr—Mention of, xi. 136.
- Wisdom—Character of, obtained through fallacies confidently asserted, ii. 480-481.
- Wisdom of our ancestors—What would be the effect of complete obedience to, ii. 392-393.
- — — The fallacy of, ii. 398-401. Substitutes inexperience to experience, 398. Arises from a confusion as to ideas of age, 398-399. Reverence for the dead, 399. Superstitions in high quarters as illustrations, 400. True estimate of the merits of our ancestors, 401. Causes of propensity to be influenced by the fallacy, ib. Legal abuses, ib.
- — — The principle of irrevocable laws an instance of, ii. 402.
- — — Maintenance and champerty, an illustration of, iii. 19-20.
- — — Fallacy of, exemplified in adherence to old law nomenclature, iii. 273.
- — — founded on, against the ballot, iii. 548.
- — — Allusions to the fallacy of, i. 230, 323-324; ii. 442; vii. 90, 598; x. 69.
- Witchcraft—part of the wisdom of our ancestors, ii. 400.
- — — Laws as to, vii. 101 n *.
- — — Confessions of, cited as instances of false confession, vii. 37.
- — — Hale's condemning for, ii. 400; v. 493; vii. 97.
- — — the state of intellect in which it was believed, vii. 101.
- Witness—Importance of the distinction between percipient and narrating, ii. 26.
- — — In what cases evidence as to character of, should be received, ii. 61-62.
- — — Extraction of testimony of, when parties distant from each other, ii. 101-102.
- — — Transmission of Process to Judiciary of, for examination of, ii. 115-116.
- — — Effect he may produce by misrepresentation to party's solicitor, iii. 365 n, 421 n.
- — — Use of publicity as a check on the veracity of, iv. 317.
- — — The difference between a narrating and a deposing propounded in the Plan of Judicial Establishment for France, iv. 396 n.
- — — Means of knowing whether his deposition coincides with his previous statements, vi. 90.
- — — Vexation and inconvenience attending the attestation of, vi. 93, 95.
- — — Special commission to examine, vi. 95.
- — — The theory, that one must not discredit his own, criticised, iii. 365 n; vi. 117-118.
- — — Impossibility of making line of demarcation between species and species of, vi. 173.
- — — Strength of persuasion of, (if genuine,) will measure that of judge, vi. 224.

Witness—Elements by which the strength of persuasion of, may be affected, vi. 224.

- Application of a scale of persuasion to, vi. 225.
- Difference between effect of distinct and dubious testimony of, vi. 227-238.
- How conscious of differences in extent of his own persuasion, vi. 232-233.
- Mendacity, verity, and falsehood in, respectively defined, vi. 249.
- Effect of refreshing the memory of, vi. 252.
- and party— False distinction created between, in some cases, ii. 26 ; vi. 231 n.
- Difficulty of extorting truth from, when unwilling, vi. 344 n.
- Application of friendly and hostile interrogation to, vi. 347-349.
- prevention of mendacity-serving information to, justifies restriction of publicity, vi. 361-362.
- Questioned for purpose of discrediting him, vi. 400-406. *See* Discreditive Interrogation.
- Means for his testing the accuracy of the minutes of his evidence, vi. 416-417.
- Presumption of English law that he will perjure himself for the side on which he is called, vi. 396.
- Crimes that may have a tendency to render veracity of, questionable, vii. 60-61.
- How far apparently supernatural facts to be believed on testimony of, vii. 106.
- Strength of impression on, depends on state of mind during the incident, vii. 139.
- How far vexation arising from the nature of his testimony is ground for exclusion, vii. 347-350.
- Absence of, how far a ground for delay, vii. 356-362.
- Absence of at trial Effect of, in English practice, vii. 361.
- Absent—writing necessary to existence of evidence from, vi. 328.
- Competency and credibility of ; the terms discussed, vi. 117.
- Credibility and incredibility considered as attributes of, vii. 77 n.
- Depositing and percipient distinguished, vi. 15 n, 219 ; vii. 130.
- Exclusion of evidence of. *See* Exclusion.
- Extraction of evidence from. *See* Extraction.
- Form of swearing in trial by jury, vi. 323.
- Form of swearing in Scotland, vii. 423-424 n.
- Improbability of as a ground of untrustworthiness, vii. 585-591.
- Inconvenience, trouble, &c. to— how far a suitable ground for the exclusion of evidence. *See* Vexation.

Witness— The various grounds of untrustworthiness in. *See* Untrustworthiness.

- Effect of an interest in the suit on the testimony of, vii. 581-584.
- Leading a, vi. 393. *See* Suggestive Interrogation.
- *Mala fide*— impossible to keep from mendacious invention from the moment of his expecting to be called on, vi. 447.
- Publicity a means of keeping to the truth, vi. 358.
- Quality and condition of—effect of on probative force, vi. 221.
- Re-examination of, vii. 451-458. *See* Re-examination.
- Restoratives to competency of, vii. 433-440. *See* Restoratives.
- Rules for producing evidence for or against the character of, vii. 60.
- Scientific—Attestation of handwriting by, vii. 177.
- Situation of as affecting his evidence, vi. 160-164.
- Veracious—natural course of conduct of, vi. 418.
- Witnesses— writs for bringing into court in Principles of Procedure, ii. 64.
- The means of communication with, enumerated, ii. 79.
- Indifference on the part of, no more to be depended on than in case of parties, ii. 102.
- Examination of, in proposed Dispatch Court, iii. 415.
- The obligation of, to attend, a necessary duty to society, however important to them their time, iv. 821.
- Prevention of undue influence on in the method of their remuneration, iii. 421.
- Evidence of as to appropriation of private property for public works, iv. 11.
- Means of curtailing the expense occasioned by the production of, iv. 345.
- are the best informers and prosecutors, iv. 391-396.
- Examination of, vi. 30-34. *See* Extraction.
- Cross-examination of. *See* Cross-examination.
- brought forward to prove alibi—Proposal for their being accompanied by testimonies to character, vii. 113.
- Attesting, to deeds—Use of, and manner in which they should act, i. 551 ; vi. 516, 525-526.
- Attesting. Infamy of, makes their hands proveable, vii. 190.
- Attesting. Absurdity of excluding merely percipient, vi. 539-540.
- Attesting, to wills, vi. 537-541. *See* Wills.
- Attesting—Use of two, an impediment to perjury by rendering an accomplice necessary, vi. 538.

- Witnesses**—Non-attesting, excluded for authentication of writs, vii. 190-192.
- Authentication of deeds by, vii. 176-177.
 - Browbeating of, vi. 338, 406-408.
 - Retaliation by, to browbeating, vi. 408 n.
 - Exclusion of evidence—how occasioned by uncompensated vexation to, vi. 95.
 - Exclusion by limitation put on the number of, vii. 531-537. *See* Limitation.
 - Exclusion of evidence for want of a particular number of, vii. 529-531. *See* Multiplicity.
 - not allowed to bear evidence to a contract except through a certain written form, vi. 70.
 - Distinction between willing and unwilling, in English law, considered, vi. 162-163 n.
 - Number of—Effect of, on probative force, vi. 221.
 - should be allowed to interrogate parties and witnesses in a cause, vi. 336, 339-341. Entitled to attend to their own collateral interest, 339. To defend their character, 339-340. Admission should be committed to discretion of judge, 340. Objections on ground of sinister interest answered, ib. On grounds of tutelary interest, 341.
 - Partiality of, to the party by whom they are called, vi. 346 n.
 - How far their affections or partialities can be calculated upon, vi. 346-347.
 - That they might enter into a confederacy, employed as an argument against publicity, vi. 357-358.
 - That fear of displeasure of party might operate on them, used as an argument against publicity, vi. 358.
 - Seclusion of—when expedient? vi. 362.
 - How far it is justifiable to seclude, to prevent tampering, vi. 450-451.
 - Difficulty of their conspiring together increased by their number, vii. 74.
 - Exclusion of parties as, vii. 226-233. *See* Parties.
 - Illustration of the expense that may be occasioned by producing, vii. 356 n.
 - Proposal to collect their names and designations by an anticipative survey, vii. 370.
 - List of, excluded and admitted in corresponding cases in criminal practice, vii. 405 n.
 - View of the cases in which certain parties are exempt from being against others, vii. 473-486.
 - Two sets of, bearing contrary testimony, exemplified, vii. 521.
 - Testimony of, should be judged of by weight, not number, vii. 521.
 - The requisition of two, by Roman and in some cases English law, considered, vii. 525-531.
 - Too great a number of, an evil, vii. 531.

- Witnesses**—Secrecy of examination of, according to the Roman system, vii. 540-542.
- Arrangements for accommodation of, in Justice Chambers, by the Constitutional Code, ix. 539.
 - Witt**—De. Appreciation of the character of, ii. 553-554.
 - Wolodmirov**—a Russian merchant—Account of, x. 160.
 - Wolseley**—Sir Charles—Remarks tending to show the untenability of the Indictment in the case of, v. 253-261.
 - Woman**—Position of, with regard to marriage, i. 352.
 - Considerations as to suitable employments for, i. 543.
 - The instrument of military rewards in barbarous countries, ii. 197.
 - Extension of the suffrage to, considered, iii. 463, 511, 559, 567 n.; iv. 567-568.
 - Opinion that they should be entitled to exercise the constitutive, but not other acts of government, ix. 108-109.
 - Suggestions for admission of, to juries, ix. 566-567.
 - Wooden horse**—The— a punishment, i. 413.
 - Woodfall**—The case of, cited, v. 97 n.
 - Woodward**—The publisher— a connexion of the Bentham family, x. 3-4.
 - Woolaston**—His theory that falsehood the only crime, i. 9 n.
 - Wooler**—Mr. publishes a version of the Reform Catechism, x. 490.
 - Woolwich**—Method of appointing to commissions at, ix. 275 n. †.
 - Reason for having the Panopticon Penitentiary in the neighbourhood of, xi. 114-115.
 - Word-of-command principle**—in the management of the Chrestomathic school, viii. 53.
 - Words**—Advantage to nomenclature from the union of, i. 49 n. †.
 - Importance of questions that turn on the meaning of, i. 192.
 - Rules for the avoidance of obscurity, ambiguity, and debility in, viii. 313-316.
 - Despotism of, through popular use, iii. 28.
 - The same, to be used for the same ideas, iii. 209.
 - Redundancy of, a defect in laws, iii. 247-248.
 - Difficulty of separating, from real entities, vi. 237.
 - employed in evidence—Importance of certainty as to, vi. 290.
 - Questions concerning the import of, confounded with facts, in reasonings on impossibility, vii. 79-82.
 - Confining of, defended, ii. 383; iii. 271-274; vii. 130.
 - Purport of—Precariousness of testimony to, vii. 136.

Words are to Propositions, what letters are to words, viii. 188.

— That they are but the arbitrary signs of things, accounts for the failure of the Aristotelian logic in making discoveries, viii. 238.

— as the signs of thought—the subject of exposition, viii. 242-243.

— Interchange of, between language and language—its advantage, viii. 319-320.

— Impossibility of freeing entirely from ambiguity, and illustration of the uses to which the defect is applied, in the particular case of the word Church, viii. 249-251.

— Single, should be used in nomenclature, viii. 65.

— Single—Propositions involved in, when language in its infancy, viii. 322.

— divided into principal and accessory—or such as have a meaning alone, and such as have meaning only when along with others, viii. 324-325.

— Importance of having them set down as a means of fixing ideas, x. 73.

— useful not only as communicating ideas to others, but as fixing them to the thinker himself, x. 74.

Work—Useful. Employment of convicts in, iv. 27-28.

— for convicts—Arrangements as to, under the Panopticon Plan, iv. 41-53. *See* Panopticon.

— Adaptation of, to Pauper management, viii. 381-385. *See* Pauper Management.

Works—Public. Principle of establishing, iii. 41 n.

— Method of Book-keeping in regard to, for the preservation of economy, ix. 237.

— proposed for the employment of pauper manufacturers, x. 85.

Working—Compulsory, as a punishment, i. 437-441.

Working Classes—The, would be the chief sufferers by a general partition, iii. 608.

— Jealousy, by the higher, of the extension of instruction to, viii. 19-21.

— The utility of an acquaintance with the natural sciences to, viii. 24.

— How far their wages and position admit of the practice of frugality, with considerations as to the utility of Savings' Banks, viii. 407-417.

Workhouses—Application of the Panopticon system to, iv. 37-248.

Workhouses, or Industry-houses—system of, viii. 371-439. *See* Pauper Management.

Workmen—Effect of machinery on the position of, iii. 39, 67-68.

— How the efficacy of the labour of, augmented, iii. 67-68.

— Usefulness of the Panopticon plan for superintending, iv. 60.

Workmen and Employers—Plan for a general system of communication between, and its anticipated advantages, viii. 398-400.

— and Employers—Effect of the relationship between, on evidence, vii. 575-576. — often sufferers from new inventions, viii. 576.

— Foreign—Encouragement to, may be advantageously adopted by individuals—not by Government, iii. 65-66.

Woronzoff—Count, x. 117, 295, 399.

Worship—application of to prison discipline, iv. 18-19, 78-79.

— Providing for the exercise of, in prisons, according to the religion of the convicts, iv. 23-24.

— Public. Provisions for the support of, i. 316-317.

Wounds—Military smart-money for—Exposition of principles applicable to, ix. 377.

Wrath—nature of, i. 53.

Wright—Mr—an acquaintance of Bentham, x. 361.

Wright—Miss Frances—Letter of, from Paris, and anecdotes reported by, x. 526-527.

— casually noticed, viii. 515, 551; x. 583.

Writ at commencement of a suit—Vagueness of, v. 450.

— The, in a common law suit, characterized, ii. 170.

Writs against person and property, in judicial procedure, ii. 116-117.

— Various kinds of, necessary for judicial communication, on elicitation of defence, ii. 78-80.

— Securing means of serving and communicating, ii. 52-57.

— necessary for bringing parties into court when a pursuer is constituted, ii. 63-64.

— issued in continuance of a suit, ii. 89-90.

— Ancient Parliamentary—Terms of, with reference to the Franchise, iii. 459-460 n.

— to judges to try causes—Origin of, v. 446.

— distinguished from unappointed evidence in being anterior, and nearer in date to the facts they testify, vi. 68-69.

— Authentication of, vii. 176-180.

— Formalities of. *See* Formalities.

Writs of error—Sham—Profit to judges from, v. 93-94 n.

— Sham, as a source of delay, &c., vii. 214-216.

— and appeals—their operation in producing judicial delay, examined, v. 518-520.

Writer of a contract—Name and description of, should be embodied in it, vi. 525 n.

Writing described as an application of drawing, viii. 29.

— The art of, necessary to the formation of grammar, and therefore writing cor-

- rectly must have preceded speaking correctly, viii. 92 n.
- Writing—Superiority of, over speaking, for political purposes, iii. 466.
- not so safe for employment of paradox as speeches, ii. 465.
 - The necessity of putting motions in political assemblies in, ii. 336.
 - Its value as an assistant to the Arts and Sciences, vi. 285-286.
 - as a security for the trustworthiness of testimony, vi. 25-26, 327-332. Its important bearing on the subject, 327-328. Distinctness, 328. Use for purpose of recollection, *ib.* For permanence, *ib.* Necessary to existence of evidence in case of absent witness, *ib.* Simple causes may proceed without, 329. But unless in the general case the grounds of decision were known, judges would be despots, *ib.* Registration of judicial proceedings proposed, 330. Disadvantages writing is liable to, 26. Capable of abuse—increase of irrelevant matter, time for mendacious invention and information, collateral evils of delay, &c., 331-332.
 - in what contracts it ought to be required, vi. 525.
 - Exclusion of evidence of contracts not committed to, vi. 132-134. *See* Exclusion.
 - Exclusion of evidence by prescribing a particular form for, vi. 132-134.
 - nullification of informal when super-added to formal, vi. 134-135.
 - Autograph—Advantages of, especially for wills, vi. 535-537.
 - Manifold system of, described and compared with the other attempts made to secure accurate duplicates, v. 406 n, 432-435; x. 578-581.
- Writings—Machines for multiplication of, vi. 576-577.
- Cases in, and conditions on which transcripts of, may be received, vii. 143-149. *See* Transcripts.
 - Private—Securities against the seizure, injury, or inspection of, adapted to a Mahomedan state, viii. 592.
- Written Discourses—Exclusion of, in debates in Legislative assemblies, ii. 361-362.
- document. *See* Script.
- Written evidence compared with unwritten, vi. 71.
- — Precedence of over unwritten, vi. 143-145.
 - — Compared with oral, vi. 170-171.
 - — More liable to evasion than oral, vii. 29.
 - — Less liable to incorrectness of expression than oral, vi. 254.
 - — Nature of authentication with regard to, vii. 174-175.
 - — Modes of authentication in case of, vii. 175-181.

- Written evidence—Modes of deauthentication in case of, vii. 181-183.
- — Subjection of, to the docimastic process, vi. 172.
 - — Casually. *See* Casually written.
 - — Criminative—effect of possession of, considered, vii. 12-13.
 - — Ex-parte preappointed, vii. 126-127.
 - — Extrajudicially. *See* Extrajudicially written.
 - — Official, and casually written evidence—modes of authentication in case of, vii. 180-181.
 - — Supposed, transmitted through oral, vi. 137-138.
 - — Supposed—Oral evidence transmitted through, vii. 138-139.
 - — Supposed, transmitted through written, or transcriptitious, vii. 139-152.
- Written pleadings considered, vii. 270-279. *See* Pleading.
- Written instruments—Accumulation of, in suits, complained of in Petition for justice, as a device of the Technical system, v. 449-451, 509-510.
- Written Pleadings The abundance of, in Processes before the Court of Session in Scotland, v. 27-29.
- — Superabundance of in England, ii. 175.
- Wrongs—Not likely to be the subject of preappointed evidence, vi. 508.
- Wyat's Practical Register, quoted, vi. 490.
- Wycombe Lord—Letter from Bentham to, x. 196-197.
- — Letter from Bentham introducing him to Sir Samuel Bentham, x. 217.
 - — Letter from, on Russian and Turkish politics, x. 219.
 - — Letter from, to Bentham in 1795. The state of Italy Neapolitan Politics—the Danish and Russian ambassadors—the Court—Lady Hamilton, &c., x. 309-312.
 - — Casual notices of, x. 225, 235, 239, 264.
- Wymondham Penitentiary—Practice of, in regard to solitary confinement, iv. 72-73.
- — Windows of, iv. 96.
 - — Dietary of, censured, iv. 154.
 - — Method of airing in, criticised, iv. 158 n.
- Wynford—Lord. *See* Best.
- Wynn—Mr Williams—Letter from Sir A. Johnston to, on Jury-trial in Ceylon, ii. 185-188.
- Wynne—Mr—Son-in-law to Dr Parr, noticed, x. 62.
- Wyse's History of the Catholic Association—O'Connell's account of, xi. 21.

X

- Xenophon, noticed or quoted, i. 175, 321; x. 16.

Yards for the airing and exercise of prisoners under the Panopticon plan, iv. 98-105.

Yeomen and Gentlemen—Distinction between, ii. 140-141.

— Proposal to mix Gentlemen with, on common juries, for the increase of intellectual aptitude, v. 164-165.

Yewhurst—The residence of Mr Mackreth—Bentham's visits to, x. 48-50.

York—Duke of—Allusion to the proceedings against, in House of Commons, vi. 43 n *.

— — Dictum by Canning at proceedings against, criticised, ii. 429.

— — and the Scheldt Expedition animated on, ix. 361-362 n; x. 399.

— — Inspection by, of Sir Samuel Bentham's Inventions and the Panopticon, x. 307.

York and Lancaster—Effect of wars of, on the liberties of Parliament, iii. 514.

Yorkshire—Register in, an example of pre-appointed transcriptitious evidence, vi. 508, 575 n.

Young—Arthur—Account of, x. 285.

— — Correspondence with, as to a calculation of the amount of real and personal property in Britain, and the population, x. 302-303.

— — Answers of, to queries regarding profit of agricultural capital, x. 373-374.

— — His Annals of Agriculture—Contributions to, on Poor-Laws and Pauper management, viii. 361-439.

Young—Arthur, noticed, iii. 481 n; iv. 52, 54, 120; xi. 102.

Young—Colonel—Letter to, x. 576-578.

— — Letter from, on India affairs—Rammohun Roy, Lord William Bentinck's government, &c., xi. 7-9.

— — noticed, x. 589-590; xi. 2.

Youth—Enfeeblement of the mind in, by intercourse with uneducated persons, viii. 12.

— — more self-devoted than age, ix. 116.

Z

Zadobras in Russia—Bentham's residence in, x. 161-180.

Zaleucus—Allusion to Laws of, i. 459 n †, 467.

Zeal—Nature of, i. 53.

— — in the performance of official duties—Means of producing, ii. 236.

— — enlogistically applied to religious persecution, ii. 438.

Zinzendorf—Count, noticed, iv. 373.

Zoology—defined and located as a branch of instruction in the Chrestomathic school, viii. 28-29.

— — Connexion of the science of, with the concerns of the working classes, viii. 24.

Zoophygiatics—or Physiology applied to the inferior animals—its place in the Chrestomathic system of Instruction, viii. 36.

Zooscopic Embioscopies—or Zoology—Position of, in the Encyclopedical Sketch of Art and Science, viii. 87.

THE END.

INTRODUCTION TO THE STUDY
OF THE
WORKS OF JEREMY BENTHAM;
BY
JOHN[·] HILL BURTON,
ADVOCATE,
ONE OF THE EDITORS.

ADVERTISEMENT.

THE writer of the following pages, believing that he possesses a more intimate knowledge than belongs to the majority of general readers, of the nature of Bentham's Works, and of the subjects discussed in them, is desirous of presenting the reader with such a cursory view of their more prominent features as may afford a general idea of their scope and character. In the performance of such a task, he will not be expected to support those opinions which coincide with his own, or to controvert those with which he may differ. In wishing his remarks, however, to be considered as of a purely expository nature, he cannot but expect that the very manner of his exposition will, in many cases, betray the partisan. He professes no claim to an impartiality which, in matters coming so closely in contact with the most important interests of the human race, would be justly ranked as an attempt to conceal thoughtlessness and indifference under the mask of candour. The subjects which will have to be mentioned are those on which almost every man has formed an opinion, and on which few can speak without exhibiting a bias. Many opinions will have to be described which, though but coldly received on their first appearance, gained gradual ground in the minds of thinking men, and are now received with so near an approach to unanimity, that it would be affectation to allude to them otherwise than as doctrines which have received the verdict of society in their favour. Even those who may dispute Bentham's first principles and general theory cannot deny to him the supremacy of the practically operating minds of his age;

and in speaking of projects which have passed through the stringent ordeal of being practically adopted by those who were at first opposed to them,* the same

* Among the various practical reforms suggested by Bentham, the following are instances in which his views have been partially, or wholly adopted by the Legislature:—Reform in the Representative system. Municipal Reform in the abolition of Exclusive privileges. Mitigation of the Criminal Code. The abolition of Transportation, and the adoption of a system of Prison discipline adapted to reformation, example, and economy. Removal of defects in the Jury system. Abolition of Arrest in Mesne process. Substitution of an effectual means of appropriating and realizing a Debtor's property, to the practice of Imprisonment. Abolition of the Usury Laws. Abolition of Oaths. Abolition of Law Taxes, and Fees in Courts of Justice. Removal of the exclusionary Rules in Evidence. Repeal of the Test and Corporation Acts, the Catholic Disabilities Acts, and other laws creating religious inequalities. Abolition or reduction of the Taxes on knowledge. A uniform system of Poor Laws under central administration, with machinery for the eradication of mendicancy and idleness. A system of training Pauper children, calculated to raise them from dependent to productive members of society. Savings Banks and Friendly Societies on a uniform and secure system. Postage cheap, and without a view to revenue. Post-office Money Orders. A complete and uniform Register of Births, Marriages, and Deaths. A Register of Merchant seamen, and a Code of Laws for their protection. Population Returns, periodical, and on a uniform system, with the names, professions, &c., of individuals. The circulation of Parliamentary Papers as a means of diffusing the information contained in them. Protection to Inventions without the cumbrous machinery of the Patent Laws.

The following are among those of his proposed Reforms, which have received only a very partial, or no legislative sanction, but which have, each, a considerable and respectable class of supporters:—Free Trade. Na-

sceptical tone of exposition cannot be expected to be employed, which would be applicable to new and untried suggestions. The writer has no intention of attempting to reduce the various subjects treated of by Bentham into a scientific logical arrangement. Part of the space will be occupied with an explanation of the manner in which he treated his subjects—part with a gen-

eral view of the conclusions which he arrived at. There will be no specific separation of these two departments; and the writer will have succeeded in his object, if it be admitted that he has afforded his readers a few useful, though loose hints, of the nature of the subjects which chiefly occupied Bentham's attention, and of the manner in which he treated them.

tional Education. The Ballot. Equal Election Districts. Local Courts. A uniform and scientific method of drawing Acts of Parliament. Public Prosecutors. A general Register of Real Property, and of Deeds and Transactions. Sanatory Regulations for the protec-

tion of the public health, under the administration of competent and responsible officers. The circulation of Laws referring to particular classes of society among the persons who are specially subject to their operation.

INTRODUCTION

TO THE

STUDY OF BENTHAM'S WORKS.

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SECTION I.

BENTHAM'S STYLE AND METHOD OF THINKING.

THE general reader is so accustomed to find subjects connected with politics and legislation, treated as the mere topics of passing criticism, that he is not prepared to see them dealt with as matter of elaborate reasoning and accurate analysis. Whoever reads the Works of Bentham should, however, take the task on hand with the condition, not of bestowing on them a mere casual perusal, but of *studying* them : and it is only in some of his lighter works, or in occasional passages of his more important ones, that those who adopt the former alternative, will find either instruction or amusement. He addressed himself to those who were prepared to bestow on the sciences of Government and Legislation the same rigid intellectual labour, without which no man ever expects to become a proficient in Mathematics or Natural Philosophy. * It was his ambition to lay the foundation and to build the superstructure of a new system, by which the departments of thought, which had too long been the playthings of party spirit, passion, and

prejudice, should be subjected to the rules of rigid philosophical inquiry ; and those who do not come to the perusal of his Works, with minds prepared to follow him through a rigid and systematic train of reasoning, cannot be said to receive him in the capacity in which he presents himself to their notice. Mistaking the method in which the author professes to teach his doctrines, cursory readers have complained of his reiteration of truisms ; and they would find the same character in the axioms of Euclid, if they perused them with the same spirit. They have complained that passages are obscure, intricate, and aimless ; and they would find the same defect in the Demonstrations of Geometry, if they were hurriedly to read isolated portions of them. The Author's aim was not to plead the cause of opinions unadmitted, or to render received doctrines more pleasing by ornament and illustration, but to *demonstrate*. It is only as a demonstrator, that he can fairly be appreciated. And those who would judge of the legitimacy of his conclu-

sions, must follow his chain of reasoning link by link. In performing such a task, impatient intellects will perhaps find a precision and minuteness of reasoning, which they would have been content to dispense with, and will see conclusions which they may think might have been leaped to, arrived at by systematic demonstration. But in submitting to this precision of intellectual exertion, they only subject themselves to the mental discipline, without which none of the more abstruse sciences can be mastered. Bentham found the whole field of morals and legislation crowded with fallacies which lurked behind slovenly expressions or incomplete arguments. He worked in perpetual fear of any fallacy finding a hiding-place in his own system; and he examined every word and every idea with scrupulous accuracy. It mattered not how unimportant might be the ground of deception: like a scrupulous merchant's book-keeper, who hunts out an error about a farthing, he would not allow the most trifling defect in argument to escape correction, because the principle of overlooking any defect is a dangerous one.

It must be admitted that this characteristic,—the keeping in view demonstration in preference to elucidation, is chiefly to be found in his later works. In those which he published early in life, there is more ornament and less of the character of severe logic. His mind was at all times rich in the produce of logical inquiry; but, in his earlier years, it was his practice to give the results of his reasonings, with the arguments generally and popularly stated, illustrated, and adorned by similes and examples; while in his more advanced years, he omitted no portion of the process by which he arrived at his conclusions, and indulged but slightly in rhetorical ornament. Of the habits of thinking, and of composition, which accompanied these distinct methods, some elucidation will be attempted farther on; but in the meantime it may be serviceable to give a few remarks on the peculiarities of the two very distinct styles which Bentham wrote at different periods of his life.

The characteristics of Bentham's early style were, power, simplicity, and clearness. There was no writer of his age whose style had less of mannerism; and the absence of all peculiarity in that of his earliest work—the *Fragment on Government*, led those who naturally sought for the author of a work so bold and original among the names known to fame, to attribute it to various great men whose respective styles were strikingly dissimilar. It was not the least pleasing feature in these early works, that while the matter was wonderfully original, there was nothing in the manner of communicating it to startle the most fastidious taste. The Author's great skill, acquired by untiring study, is exhibited in the facility with which he adapts the common language of our literature to philosophical purposes, for which it had never at any previous time been used. There is never any vagueness in the expression of the most abstruse propositions; and yet they are framed out of a nomenclature which had not been intended for the elucidation of distinctions so subtle. Indeed, it would not be possible to find in the English language a style better adapted, in every respect, to describe in clear terms that which is, of all things with which language has to deal, the least easily made clear.—The operations of the mind. The reader who is acquainted with his *Introduction to the Principles of Morals and Legislation*, his *Panopticon*, his *Defence of Usury*, and his other works written in the 18th century, will require no confirmation of this opinion. As an illustration may be acceptable to some readers, the following is taken at random—it is from the *Defence of Usury*:—

The business of a money-lender, though only among Christians and in Christian times a proscribed profession, has nowhere, nor at any time, been a popular one. Those who have the resolution to sacrifice the present to the future, are natural objects of envy to those who have sacrificed the future to the present. The children who have eaten their cake, are the natural enemies of the children who have theirs. While the money is hoped for, and for a short time after it has been received, he who lends it is a friend and benefactor: by the time the money is spent, and the evil hour of reckoning is come, the benefactor is

STYLE AND METHOD.

found to have changed his nature, and to have put on the tyrant and the oppressor. It is an oppression for a man to reclaim his own money ; it is none to keep it from him. Among the inconsiderate, that is, among the great mass of mankind, selfish affections conspire with the social in treasuring up all favour for the man of dissipation, and in refusing justice to the man of thrift who has supplied him. In some shape or other, that favour attends the chosen object of it through every stage of his career. But in no stage of his career can the man of thrift come in for any share of it. It is the general interest of those with whom a man lives, that his expense should be at least as great as his circumstances will bear ; because there are few expenses which a man can launch into, but what the benefit of them is shared, in some proportion or other, by those with whom he lives. In that circle originates a standing law, forbidding every man, on pain of infamy, to confine his expenses within what is adjudged to be the measure of his means, saving always the power of exceeding that limit as much as he thinks proper ; and the means assigned him by that law may be ever so much beyond his real means, but are sure never to fall short of them. So close is the combination thus formed between the idea of merit and the idea of expenditure, that a disposition to spend finds favour in the eyes even of those who know that a man's circumstances do not entitle him to the means : and an upstart, whose chief recommendation is this disposition, shall find himself to have purchased a permanent fund of respect, to the prejudice of the very persons at whose expense he has been gratifying his appetites and his pride. The lustre which the display of borrowed wealth has diffused over his character, awes men during the season of his prosperity into a submission to his insolence, and when the hand of adversity has overtaken him at last, the recollection of the height from which he has fallen, throws the veil of compassion over his injustice.

The condition of the man of thrift is the reverse. His lasting opulence procures him a share, at least, of the same envy that attends the prodigal's transient display : but the use he makes of it procures him no part of the favour which attends the prodigal. In the satisfactions he derives from that use—the pleasure of possession, and the idea of enjoying at some distant period, which may never arrive—nobody comes in for any share. In the midst of his opulence he is regarded as a kind of insolvent, who refuses to honour the bills which their rapacity would draw upon him, and who is by so much the more criminal than other insolvents, as not having the plea of inability for an excuse.

Could there be any doubt of the disfavour which attends the cause of the money-lender in his competition with the borrower, and of

the disposition of the public judgment to sacrifice the interest of the former to that of the latter, the stage would afford a compendious, but a pretty conclusive proof of it. It is the business of the dramatist to study, and to conform to, the humours and passions of those on the pleasing of whom he depends for his success ; it is the course which reflection must suggest to every man, and which a man would naturally fall into, though he were not to think about it. He may, and very frequently does, make magnificent pretences of giving the law to them : but woe be to him that attempts to give them any other law than what they are disposed already to receive ! If he would attempt to lead them one inch, it must be with great caution, and not without suffering himself to be led by them at least a dozen. Now I question whether, among all the instances in which a borrower and a lender of money have been brought together upon the stage, from the days of Thespis to the present, there ever was one, in which the former was not recommended to favour in some shape or other—either to admiration, or to love, or to pity, or to ail three ;—and the other, the man of thrift, consigned to infamy. *

His later works,—those written from the year 1810 downwards, exhibit a marked change in style ; whether an improvement or a deterioration, the present writer, while endeavouring to explain the nature of the alteration, will not venture to decide. The symptoms of the change will be found in his works and correspondence of the early part of the 19th century, and the Letters to Lord Grenville, on the proposed Reform in the Court of Session in Scotland,† printed in 1808, may be taken as a specimen of his style in its transition state. The prominent feature in the change arose out of a dissatisfaction with the ordinary terms of language, and their accepted arrangement, as a means of conveying, with that certainty and precision which the author aimed at, his new opinions, with their subtle subdivisions and distinctions. One of the means which he had recourse to, was the formation of a new technical nomenclature for his own purposes ; this was a design which he had in view from the commencement of his career, but it was in after life that he gave his most ex-

* Defence of Usury, Works, vol. iii. p. 17.

† Works, vol. v. p. 1 *et seq.*

tensive exemplifications of it. Its nature, and the uses to which he employed it, will be noticed farther on. But, independently of neology, the style, as developed in the construction of the sentences, was novel, and avowedly so. In his minute divisions, he had perpetual occasion to compare, balance, or contrast one proposition with another; and, looking upon language as the only means through which this could be accomplished, he judged that uniformity, in the structure of sentences, would make that very structure subservient to his purposes. His arrangement was such, that the predicate, the copula, and the subject—that distributive, limitative, or exceptional terms, if there were any,—were all to be found in precisely the same parts of every sentence; and by this uniformity he was enabled, to a certain extent, to manipulate his sentences, as if they were Algebraic signs; a service to which he never could have applied the freedom and variety of locution, sanctioned by the ordinary rules of rhetoric. As an illustration of what is here attempted to be described, the following extracts, from a few notanda, explanatory of the leading principles of his opinions, may be adduced. If there be a certain degree of monotony, and even of repetition, in the sentences, it will be admitted, that they are admirably constructed for comparison with each other, and for enabling the eye to assist the mind in perceiving the principle of their connexion.

1. *June 29, 1827.*

1. Constantly actual end of action on the part of every individual at the moment of action, his greatest happiness, according to his view of it at that moment.

2.

2. Constantly proper end of action on the part of every individual at the moment of action, his real greatest happiness from that moment to the end of life. See *Deontology* private.

3.

3. Constantly proper end of action on the part of every individual considered as trustee for the community, of which he is considered as a member, the greatest happiness of that same community, in so far as depends upon the interest which forms the bond of union between its members.

4.

4. Constantly proper end of action on the part of an individual, having a share in the power of legislation in and for an independent community, termed a political state, the greatest happiness of the greatest number of its members.*

One of his favourite, and most serviceable arrangements, was the employment of a verbal substantive with an auxiliary, instead of a verb. "I use a substantive," he says, "where others use a verb. A verb slips through your fingers like an eel,—it is evanescent: it cannot be made the subject of predication—for example, I say to give motion instead of to move. The word motion can thus be the subject of consideration and predication: so, the subject-matters are not crowded into the same sentence,—when so crowded they are lost,—they escape the attention as if they were not there."†

Much outcry has been made about the intricacy and obscurity of Bentham's sentences. Those who bring the charge often forget that he demands severe thought as due to his subject, and that no form of phraseology would make a golden path to that which, in its very nature, requires a continuous process of abstraction. That Bentham's sentences are complex, is, however, in many instances, true; but that they are obscure or dubious, is so much the reverse of the fact, that their complexity arises, in a great measure, from the anxiety with which he has guarded them against the possibility of their meaning being mistaken. So anxious is he that the mind should not, even for a passing moment, adopt a different understanding from that which he wishes to impress on it, that he introduces into the body of his sentence all the limitations, restrictions, and exceptions which he thinks may apply to the proposition broadly stated. He limits his meaning, in the most precise manner, by a circunvallation of well-weighed words. It is difficult for the mind sometimes to trace all the intricate windings of the sentence; still more difficult to have it,

* Works, vol. x. p. 560.

† Ibid. 569.

STYLE AND METHOD.

in all its proportions, clearly viewed at once; but, when this *has* been accomplished, it is at once clear that all the apparent perplexity arises from the skill with which the author has made provision that no man shall have a doubt of what he means to say. Take the following specimen from the *Rationale of Evidence*: the point under consideration is the extent to which a transcript may serve in evidence, in place of the original deed. Almost every sentence is complex; but when the reader has been at the trouble of abstracting his mind to the extent necessary for embracing its full meaning, he will allow that there can be no dubiety whatever as to what that meaning is—that it is clear and indubitable. The author is most careful, that, when he speaks of a possessor, it is understood that he does not mean also a proprietor; that the circumstance of his detention of the document being intentional, or unintentional, does not influence the question: that the extent of danger to which the original may be exposed by inspection, is limited, &c. &c.

When the original of a deed or other written document is so situated that the production of it cannot be effected without a more than ordinary degree of vexation, expense, and delay—lodged in some place between this and the antipodes, in the hands of some possessor, who, proprietor or not, does or does not choose to part with it or to bring it;—where such is the situation, or supposed situation, of a supposed or alleged original, at the time that an alleged transcript, or sufficient extract or abstract, is ready to be produced;—a question may arise as between the two documents, the alleged original and alleged transcript, (both certainly not being necessary, one perhaps sufficient,) which, if either of them, shall be admitted. Were both present, the admission of the transcript (unless it were for momentary provisional

consultation, for the purpose or in the course of argument) would evidently be attended with some (howsoever little) danger, and with no use. A transcript, how little soever inferior in point of trustworthiness to the original, can never, so long as man is fallible, be considered as exactly upon a par with it. But the original is so circumstanced, that, rather than load the cause with the vexation, expense, and delay, attached to the production of it, it would be better to exclude it: nay, even although, to the prejudice of the side by which it should have been produced, misdecision were sure to follow. It ought therefore to stand excluded: and thereby the whole of the evidence from that source, were there no other remedy.

But the transcript,—although, in preference to or indiscriminately with the original, it ought not to be produced,—yet, rather than the evidence from that source should be altogether lost, and misdecision take place in consequence, might (if ordinarily well authenticated)—might, with much less danger than what is frequently incurred in practice, be (under the conditions above proposed) received instead of it. Nevertheless, mischief from misdecision ought at the same time (so far as is consistent with the regard due to the avoidance of preponderant collateral inconvenience in the shape of vexation, expense, and delay) to be obviated as effectually as possible. Accordingly, previously to execution, obligation (or at least liberty) ought to be in the hands of the judge, for taking from the party thus to be instated, sufficient security for the eventual reinstatement of the other party; in case that, within a time to be limited, the propriety of the opposite decision should have been made appear,—the authenticity of the transcript, or its correctness or completeness with relation to the point in question, having been disproved.*

The following passages on the subject of unpromulgated laws, are given as an illustration of the difference between Bentham's early and his later manner. The difference in the style will probably not be more remarkable than the similarity of the opinions:—

WRITTEN IN THE YEAR 1790.

Of the condition of him whose curse, I had almost said whose crime, it is to live under such laws, what is to be said? It is neither more nor less than slavery. Such it is in the very strictest language, and according to the exactest definition. Law, the only power that gives security to others, is the very thing that takes it away from him. His destiny is to live his life long with a halter about his neck; and his safety depends upon his never meeting with that man whom wantonness or malice can have induced to pull at it. Be-

WRITTEN ABOUT THE YEAR 1825.

Whatever good effects the portion of law in question may, in virtue of its matter, be intended or calculated to produce, the production of those effects will depend, in the instance of each individual on whom the law calls for his obedience, on the hold which it has happened to it to take upon his mind: viz. in the first place, upon the circumstance of the fact of his being apprized of the existence of the law; of the general matter of fact—viz., that on

* Works, vol. vii. p. 379.

tween the tyranny of sleeping laws, and the tyranny of lawless monarchy, there is this difference: the latter is the tyranny of one, the other is the tyranny of millions. In the one case, the slave has but one master; in the other, he has as many masters as there are individuals in the party by whom the tyranny has been set up.

Tyranny and anarchy are never far asunder. Dearly indeed must the laws pay for the mischief of which they are thus made the instruments. The weakness they are thus struck with does not confine itself to the peccant spot; it spreads over their whole frame. The tainted parts throw suspicion upon those that are yet sound. Who can say which of them the disease has gained, which of them it has spared? You open the statute-book, and look into a clause: does it belong to the sound part, or to the rotten? How can you say? by what token are you to know? A man is not safe in trusting to his own eyes. You may have the whole statute-book by heart, and all the while not know what ground you stand upon under the law. It pretends to fix your destiny: and after all, if you want to know your destiny, you must learn it, not from the law, but from the temper of the times. The temper of the times, did I say? You must know the temper of every individual in the nation; you must know, not only what it is at the present instant, but what it will be at every future one: all this you must know, before you can lay your hand upon your bosom, and say to yourself, *I am safe*. What, all this while, is the character and condition of the law? Sometimes a bugbear, at other times a snare: her threats inspire no efficient terror; her promises, no confidence. The canker-worm of uncertainty, naturally the peculiar growth and plague of the unwritten law, insinuates itself thus into the body, and preys upon the vitals of the written.

All this mischief shows as nothing in the eyes of the tyrant by whom this policy is upheld and pursued, and whose blind and malignant passions it has for its cause. His appetites receive that gratification which the times allow of: and in comparison with that, what are laws, or those for whose sake laws were made? His enemies, that is, those whom it is his delight to treat as such, those whose enemy he has thought fit to make himself, are his footstool: their insecurity is his comfort; their sufferings are his enjoyments; their abasement is his triumph.

Whence comes this pernicious and unfeeling policy? It is tyranny's last shift, among a people who begin to open their eyes in the calm which has succeeded the storms of civil war. It is her last stronghold, retained by a sort of capitulation made with good government and good sense. Common humanity would not endure such laws, were they to give signs of life: negligence, and the fear of

the subject in question there exists such a thing as a portion of law: in the next place, upon the degree of correctness and completeness with which, as often as any occasion comes for acting in obedience to, or in any other way in pursuance or consequence of, such portion of law, the matter of it is present to his mind.

To the production of any bad effects, no such notoriety is, in the instance of any portion of law, in any degree necessary.

For a man to be put to death in due course of law, for non-compliance with this or that portion of law, it is not by any means, in any case necessary, that either the matter of it, or the fact of its existence, should ever have reached his mind. On the contrary, whosoever they be to whom it is matter of satisfaction that men should be put to death in due course of law (and these, more especially among English judges and other English lawyers, are many,) the greater the extent to which they can keep from each man's mind the knowledge of such portions of law to which, on pain of being put to death for disobedience, they are called upon to pay obedience, the greater the extent to which they can administer this satisfaction to their minds; and if the portions of legal matter to which this result is attached, had for their object the administering of this satisfaction to those from whose pens they issued, they could scarcely have been rendered in a more effectual degree subservient and conducive to that end, than they have been rendered by the form into which the matter of that, and all other parts of the English law have been cast.

True it is, that before any man can be put to death, or otherwise vexed for non-obedience to any portion of law, what is necessary is, that some person—nay, that divers and sundry persons, should be apprized, not only of its existence, but its contents; forasmuch as a man of ordinary prudence, such as are all those who are in the habit of taking each of them a part in an operation of this sort, will not engage in any such operation except in the persuasion, well or ill-grounded, of his being warranted in so doing, if not by the tenor of any real law, at any rate by the feigned tenor or purport of some imaginary law or rule of law, which for his justification and protection will be attended with this same effect.

But when the bearing a part in the putting of men thus to death, is of the number of those acts by the performance of which men are called upon to manifest their obedience, the production of an effect of this sort is not among those results which generally, openly, and avowedly, at least by the legislator, are held up to view in the character of the objects or ends in view ultimately aimed at: ultimately and absolutely good a result of this sort is not generally (for even here there are some exceptions) declared to be; relative, and that alone, is the term employed in giving expression to the point of view in which any such

change, suffer them to exist so long as they promise not to exist to any purpose. Sensible images govern the bulk of men. What the eye does not see, the heart does not rue. Fellow-citizens dragged in crowds, for conscience' sake, to prison, or to the gallows, though seen but for the moment, might move compassion. Silent anxiety and inward humiliation do not meet the eye, and draw little attention, though they fill up the measure of a whole life.*

But, independently of all reference to his style, there are certain peculiarities in the method of Bentham's literary labour, which must be kept in view in relation to the appearance which his later works present. He who writes a book for the purpose of influencing the public mind, by, in the first place, securing the public attention, will in general be careful to use the accepted methods of making it attractive. If the matter he has to expound should be original, and perhaps repulsive, he will take care that the form in which it is presented shall have as little as possible of the latter qualification. There are arts, in drawing the public attention to books, acquired and handed down by long experience; and these, so far as he can, he will adopt. Above all, he will see that a great deal of what is passing through his mind in the course of composition, is matter which it will do more harm than good to his work to insert in it; and he will select, prune, and arrange, till the whole has a passable appearance. Above all, he will present a work which is *ex facie* finished, and containing all that, at the beginning, the author has announced that he is to give.

It will be at once understood that Bentham did not adopt these appliances, and the cause will be perceived, when it is stated, that in later life he prepared none of his works for the press. It was his opinion, that he would be occupied more profitably for mankind in keeping his mind constantly employed in that occupation to which it was supereminently fitted, and in which it seemed to find its chief enjoyment—rationeination. He thought that while he lived in the possession of this faculty, he should give

appellative as *good* is spoken of as applicable to such a subject:—that A should be put to death is good, is maintained, Why? That B and C may, without being put to death, abstain from the commission of acts of the sort of that, for the performance of which A is thus ordered to be dealt with.†

as much of the results of it to the world, as he could accomplish by a life of constant labour, temperance, and regularity; and he left it to others to shape and adapt to use the fabric of thought which thus came out continuously from the manufactory of his brain. Laying his subject before him for the day, he thought on, and set down his thoughts in page after page of MS. To the sheets so filled, he gave titles, marginal rubrics, and other facilities for reference, and then he set them aside in his repositories, never touching or seeing them again. It was his method to divide and subdivide his subject at the outset; and after having carried this subdivision to the utmost extent which he thought necessary, he would begin his examination of one of the branches of the lowest subdivision. Having exhausted the two branches‡ of this ultimate division, he would then go back to one of the higher branches of division, which would lead him to a subdivision in another quarter; and thus, like the anatomist who first explains to his pupils the general component parts of the human frame, and begins his dissection at one of the extremities with the design of taking them *seriatim* and working towards the heart, he took care that, so far as he went, his analysis should be completely exhaustive. It happened, however, very frequently, that his psychological dissection went no farther than the extremities of the subject he had laid out for anatomizing. This is remarkable in the Department of Logic and Metaphysics. Under the general head of Logic, a complete analysis of all the powers and operations of

† Works, vol. iii. p. 237.

‡ His system, according to the principle of Bifurcate division to be afterwards noticed, was always to divide by two.

* Works, vol. iv. p. 397-398.

the human mind had been intended; but the subject obtaining but a portion of his time in conjunction with the other vast projects which he contemplated, he was enabled only to leave behind him some fragments, of which a selection has been given under the titles *Logic*, *Ontology*, *Language*, and *Grammar*, in vol. viii. of the Works. They are specimens of the most finished workmanship, but still they are merely *fragments*. Perhaps the only extensive subject which the author completely investigated, according to the rigid method latterly adopted by him, was *Evidence*; and his work on this subject fills two of the closely-printed volumes in the collected edition. It is a larger work than Blackstone's *Commentary on the Laws of England*. But there is another work—and, perhaps, the most boldly conceived of all his projects, which Bentham lived to complete—his *Constitutional Code*. The plan on which he is described as proceeding in his analysis is not here applicable, for the work is synthetic, not analytic. It is neither an examination of the principles on which laws are made, nor of those on which they ought to be made, but a substantive code of laws. It may be safely pronounced, that in no language does any other such monument of the legislative labour of one mind exist. Independently altogether of any question as to the principles of government developed, or the sagacity of the general plan; the completeness of the fabric—the accuracy of the proportion of all parts to each other—the total absence of any sort of incongruity in the relations to one another of such a quantity of things, great and small, which have to be fitted to each other to form a homogeneous whole,—astonish the mind of the reader with the evidence that they convey of the comprehensiveness and clearness of the Author's intellect.

The above remarks, bearing chiefly on the precision with which Bentham pursued his inquiries, would give an imperfect notion of his later writings without an allusion to one signal characteristic—the bursts of fiery eloquence with which he sometimes soars from the

rigid logic of his usual system. It is when his subject brings him in contact with illustrations of suffering and oppression that the man thus breaks from the philosopher. Among some pamphlets which he wrote towards the termination of the reign of George III., when he believed the remaining liberties of the country to be in imminent danger, there are many such passages as the following:—

Yes!—you pillage them: you oppress them: you leave them nothing that you can help leaving them: you grant them nothing, not even the semblance of sympathy: you scorn them: you insult them: for the transgression of scores, or dozens, or units, you punish them by millions; you trample on them, you defame them, you libel them: having, by all you can do or say, wound up to its highest pitch of tension the springs of provocation and irritation, you make out of that imputed, and where in any degree real, always exaggerated irritation, a ground, and the only ground you can make, for the assumption, that, supposing them treated with kindness—all their grievances redressed—relief substituted to oppression, they would find, in the very relief so experienced, an incitement—an incitement to insurrection, to outrage, to anarchy, to the destruction of the supposed new and never-yet-experienced blessing, together with every other which they ever possessed or fancied.

Levelling!—destruction of all property! Whence is it they are to learn it?—what is there they can get by it?—who is there that ever taught it them?—whose interest is it?—whose ever can it be—to teach it them? How many of them are there, who would, each of them, be so eager to lose his all? The all of a peasant—to the proprietor how much less is it, than the all of a prince—the all of him whose means of livelihood are in his labour, than the all of him whose means of livelihood are in his land? Who again is it, that, in your notion at least, they are at this moment so abundantly looking to for instruction? Is it not Cobbett? With all his eccentricities, his variations, and his inconsistencies, did he ever attempt to teach them any such lesson as that of equal division of property—in other words, annihilation of it? In the whole mass of the now existing and suffering multitude, think ye that one in a score, or in a hundred, not to say a thousand, could be found, so stupid, so foolish, as either of himself or from others, to fancy that, if without other means of living, he had his equal share in the whole of the land to-day, he would not, twenty to one, be starved upon it before the month were out? Oh! if the men, in whom—truly or erroneously—they beheld their friends, were not better instructors as well as better friends to

them than you are, or than it is in your nature to be, long ere this would the imputation you are thus so eager to cast on them, have been as substantially grounded as it now is frivolous.*

Bentham was singularly happy in the employment of lively, humorous illustrations. He took care that in their use fancy should never be allowed to take the precedence of reason; the logical proposition was formed before the ornament was added, and the purpose of the latter was merely to make it more distinct to the eye. He made war against a system which is too common—that of using a simile not as a means of making clear and palpable the meaning of an argument, but as a substitute for the argument itself. His own similes never divert the mind from the original reasoning—they only serve to make it more vivid. Thus, the sense of hardship experienced by rapacious judicial officers, on being deprived of an illicit source of gain to which they never should have been allowed access, is compared to the sense of hardship experienced by the shark who, having bit off one of Sir Brooke Watson's legs, was compelled to leave the other in its place. "Under English law," he says, "not to speak of other systems, the sort of commodity called *justice*, is not only sold, but, being like gunpowder and spirits made of different degrees of strength, is sold at different prices, suited to the pockets of so many different classes of customers."† Talking of the English system of pleading, and its anticipated adoption in Scotland, he says—"I have no more apprehension of seeing the Scotch nation submit to defile itself with any such abomination, than I have of seeing the port of Leith opened, for the importation of a pack of mad dogs, or for a cargo of cotton impregnated, *secundum artem*, with the plague."‡ Again—

If a man comes and pleads his clergy, whatever goods he had, the king has got them. This being the case, having had your clergy, you are innocent, or, what comes to the same

thing, you are forgiven. All this is very true; but as to your money, the king, you hear, has got it; and when the king has got hold of a man's money, with title or without title, such is his royal nature, he cannot bear to part with it; for the king can do no man wrong, and the law is the quintessence of reason. To make all this clear, let it be observed there is a kind of electrical virtue in royal fingers, which attracts to it light substances, such as the moveables and reputed moveables of other men; there is, moreover, a certain gluinous or viscous quality, which detains them when they have got there.

Such are the grounds upon which the forfeiture of personal estate, in cases of clergyable felony, still continues to subsist.§

In relation to official men talking of appointments they have used every effort to obtain, as if they were innocent of all design in the matter, he says—"These are of the number of those gracious designs, which, till the very moment of their taking effect, are never known of. While the eyes of the right honourable person are, as usual, fixed on heaven, the grant is slipped into his pocket; and when, putting in his hand by accident, he feels it there, his astonishment is not inferior to his gratitude."||

The neology of Bentham—his construction of new words to serve his purposes—has been the subject of much attack and ridicule. This is not the place for discussing the question whether he has done any service to the language by this system of innovation, or whether the words he has coined ought or ought not to have received a more general admission into the current language of the age, than they have received; but it may be of service to the reader to explain the principles on which he proceeded in his fabrication of words, and the extent to which he has served the ends he had in view. It must be remembered that Bentham took up the position of a scientific inventor and discoverer in a new field of human knowledge—a field which, he maintained, had been left to the dominion of empirical discussion, and which thus displayed, both in the substance of all the reasoning that it produced, and in the nomenclature employed

* Works, vol. iii. p. 475-476. † Ibid., vi. 134.

‡ Ibid., v. 42.

§ Works, vol. i. p. 508.

|| Ibid., v. 286.

by the reasoners, the obscurity and confusion of mere popular and unscientific handling. He entered on the field of Morals and Legislation, as Linnaeus did on the Animal and Vegetable kingdoms, and as Lavoisier did on the science of Chemistry—to analyze, and to introduce order and method; and, like these great men, he found that the popular nomenclature which had accompanied the vague notions of his predecessors, was insufficient in precision, and the other scientific requisites, to represent his own accurate and distinct classification. But he had difficulties to contend with which were not encountered by the pioneers of natural science. In their case, none trod the same path of investigation but such as were, like themselves, philosophers, who were prepared to view every improvement with scientific appreciation, and to take advantage of, instead of censuring, whatever tended to facilitate farther investigation, by the classification and arrangement of the knowledge already acquired. The difficulty which Bentham had to contend with was, that his subjects of inquiry were not monopolised by philosophical investigators, but related to matters of which all classes of the people—the learned and the unlearned—the scientifically precise, and the vaguely declamatory—are almost always thinking. The classification of plants is left to the undisputed control of the botanist: but every man is a classifier of offences, and duties, and legal obligations; nay, it generally happens, that, however little labour or thought he may have bestowed on the subject, every man deems his own classification the very best that can be made. Moreover, in the case of the operations of nature, the sinister interests which, being at war with the whole of Bentham's system, are inimical to every branch of it, do not operate; and whoever has sufficient ability to accomplish the end, and will undertake the labour of making a serviceable nomenclature, in any new department of Nature's works, is left the undisputed despot of his own system.

Whatever view may be taken of the abstract merits of Bentham's nomencla-

ture, to the accomplishment of his own ends it was indispensable; and the student will not have dipped very deeply into his works before he discovers how impossible it would have been to accomplish that precision of analysis, and that uniformity in all the proposed legislative reforms, of which the instances are so many and conspicuous, without the construction of a nomenclature specially adapted to the Author's own use. A few examples will illustrate this statement. To *maximise* is a word of frequent occurrence. To *maximise official aptitude*, for instance, means—to raise that quality to the highest attainable pitch,—and the author would have required to use all these words, whenever he wished to express such an idea, if he had not coined a word for his own use. To “raise” would not have done, for it expresses no *terminus ad quem*. “Increase,” “improve,” and “enlarge,” are subject to the same objection—they express increment, but not to the greatest practicable point. To “make perfect” would not express the meaning, which bears in *gremio* the understanding, that perfection is not attainable.—He found the rule of action, in matters where one nation was concerned with another, called the “Law of nations,” a term which intimated, not the purpose or use of the law, but its mere possession, as if it were the only sort of law which nations possessed. He called it *International Law*.—He found no word in the language suited to express a universal body of Law; for the word *Code*, which is generally employed, has nothing in it to express universality, and is, indeed, applied to particular departments of the Law—*e. g.* the Civil Code, the Criminal Code, &c. He therefore coined the word *Pannomion* from the Greek.—The adjective “civil,” as applied to law, he found possessed of various meanings, sometimes applying to all those portions of the law which are not ecclesiastical, sometimes to all those which are not penal, and sometimes to all those which are not military; and he found it necessary to discard it, and frame the distinctive term *Non-penal*.—The word “criminal” he found to be equivocally

used. A criminal lawyer might mean a lawyer versed in the penal department of the law, or a lawyer guilty of crimes; a word so tainted with dubiety was useless for the Author's purposes, and had to be discharged.—The substantive "right" he found employed, and mischievously employed, with an ambiguous meaning. Originally it signified that which the law sanctions,—my rights are those privileges of action and possession, which are fixed in my favour by the existing law. If I dispose of goods by bargain and sale, I have a right to the stipulated price, and no other man has any rival right. If I am a member of the corporation of London, I have a right to vote for a Lord Mayor of London, but not for a Chief Justice of the Common Pleas, or a Mayor of Manchester. So, if I be registered on a qualification, in terms of the Reform act, I have a right to vote for a member of Parliament, but I have no such right if I be unqualified. But, by a confusion between this substantive, and the adjective *right*, which is the opposite of *wrong*, people applied the term their *rights*, not only to those privileges of which they were in possession, but to those which they thought they *ought* to possess—to those which it was *right* they should have. Hence came declamation about "inprescriptable rights," "sacred and inalienable rights," &c.; and the effect of the confusion was, that when people demanded new privileges, they spoke of them as their rights—as privileges to which they were entitled by law, but which were denied them. The confusion ended not in mere words; for men, acting as if their legal rights were denied to them, became filled with the violence, invective, and turbulence, with which an open refusal to enforce the fixed law is apt to fill every man's breast.* It was a singular illustration of the equivocal of the word, that Blackstone should have divided his Commentaries into Rights and Wrongs, as if the substantives right and wrong were, like

the adjectives of the same words, the precise opposites of each other. The word "rights" was employed in Bentham's earlier works in its precise meaning as a counterpart to fixed obligations, when he examined the objects of the civil law; but in his later works, when he had established his own distinct nomenclature, it was discarded, and the whole body of the law was scientifically divided, as we find it in the introductory Book of the Constitutional Code.†—The verb *codify*, and the substantive *codification*, have encountered much ridicule; but the subject to which they refer is as legitimate a source of laughter as the terms thus applied to it; for, except by means of such words, it would have been impossible for the Author, without much dubious circumlocution, to have urged the utility of codes of law, and to have pointed out the best means of constructing them. A code is a collective body of laws complete so far as it goes, and sanctioned, as covering the whole of its particular field, by the legislative authority. To perceive the difficulty of investigating the subject with Bentham's scientific scrutiny, without a verb corresponding to the action of creating or making a code, let the reader imagine how incomplete would be any inquiry into the operation of making laws in detail, without a verb corresponding to that operation—viz., the verb to legislate, with its substantive Legislation.

There were two distinct classes of cases, in which Bentham found subjects of discussion to which no one had ever given names, and which, therefore, had he not himself come forward as godfather to them, would have remained undenominated. In the one he scattered his nomenclature here and there, whenever, in the course of his researches, he found operations and phenomena, which, though already known to be at work, had received no denominations. In the other he applied new names to the new machinery which, in his own constructional projects of legislation, he proposed to erect. The following may be adduced

* See Works, vol. ii. p. 500 *et seq.*

† Works, vol. ix. p. 8.

as instances of the former division of his nomenclature—In all operations connected with courts of law, the quality of being accessible or inaccessible to the purpose of fulfilling the decrees of the court, is sometimes a most important quality both in men and things. The Author perceived, that though the importance of the quality was admitted by every one whose attention was attracted to it, no one had given it a name; and as he had often to speak of it himself, he found it necessary to designate it, and he called it *Forthcomingness*. He found no term characterizing the use in one litigation of evidence which had been elicited for service in another, so as to distinguish it from evidence collected solely for the litigation in which it is applied—and he called the former *Adscitious evidence*. In evidence as furnished by writings, he found that the nomenclature of the law did not distinguish those writs which were prepared with the express end of serving as evidence, from those which, not being prepared with any such view, came, incidentally, and from the course of events, to be articles of real evidence.—The one he called *Preappointed written evidence*, the other *Casually written*.

The other species of Nomenclature applies to the new offices and new functions, required for bringing the Author's system of government into full operation. Such are the Functionaries: *Judiciary Registrar, Government Advocate, Eleemosynary Advocate, and Local Headman*; and the functions—*Judiciary-power controlling, Communication-aiding, and Beneficent-mediation*.^{*} Here it was absolutely necessary that the Author should choose his own names; and the only question can be, whether he is successful in his choice.

To a complete scientific Nomenclature the Author found two qualities—the one necessary, the other expedient. The former is distinctiveness, and is exemplified in the use of words, which are restricted to the meaning assigned to them, and have no other meaning at-

tached to them which can occasion a dubiety in their use. The other qualification is, that they should have, as distinct as possible, an etymological reference to the thing they are intended to express. There are two advantages in a good etymological nomenclature—it not only assists the memory and aids the judgment by the connexion between the word and the thing signified, but it forms a medium through which the various branches of a science or art may be seen in their connexion with each other. A very remarkable illustration of the power to create such a nomenclature is afforded by the Author's Encyclopedical Table, and the accompanying treatise.† It begins with Wellbeing, or Eudæmonics, and by subdivision, embraces most of the subjects of human knowledge in collected groups, giving to each a new and apt name. Thus, Natural History and Natural Philosophy are respectively represented by Physiurgic Somatology, and Anthropurgic Somatology: the one signifying the science of bodies, in so far as operated upon in the course of nature without the intervention of man—the other the science of bodies, so far as man, by his knowledge of the convertible powers of nature, is able to operate upon them. Of the unaptness of the previous nomenclature the Author says:—

Of the two words,—the first an adjective, the other a substantive,—of which the compound appellation *Natural History* is formed,—it found, at the time of its formation, the substantive *History* already appropriated to the designation of a branch of learning, having for its subject those *states of persons and things* of all sorts, and those *events* of all sorts, that have been known or supposed to have had place in times *past*: present time either being altogether excluded, or its history being but as it were a point, in comparison with the time of history which it closes. Adding the word *natural*, say *Natural History*, the result is, that, for the import, designated by this appellative, antecedently to the establishment of that usage from which it has received an import so widely different, *we have this*, viz., the *natural account of those states of persons and things*, and so forth, and of those *events*, and so forth, which had place in times *past*.

Now, with what propriety, to any one of the above-mentioned so aptly denominated

* See the Constitutional Code, Works, vol. ix.

† Works, vol. viii. p. 63 et seq.

divisions, of the branch of art and science itself thus unaptly denominated,—with what propriety, to Mineralogy, to Botany, to Zoology,—can the term *Natural History*, consideration had of its original and proper import as thus developed, be applied?

The branch of art and science, for the designation of which the compound appellation *Natural Philosophy* is in use, is that which has, for its *subject, matter* in general, considered in respect of such modifications as it has been made, or may be expected to be made, to undergo, by human *art*, under the guidance of *human science*: with the addition, perhaps, of such properties, as, by means of changes made in it by the application of that same mental instrument, have been discovered to have been already belonging to it.

Taken by itself, *Philosophy* is the *love of wisdom*. Adding the word *natural*, say *Natural Philosophy*, and, for the import designated by this appellation, antecedently to the arbitrary usage, established in this case as in that other,—we have *this*, viz. *the natural love of wisdom*.*

But the Author, while showing an illustration of what may be accomplished towards a pure and apt nomenclature, admits, that in the majority of cases, the task of driving out the old empirical

system of names would be, in many cases, impossible, and that the advantage would, in others, fail to compensate for the labour of the operation.† It was, therefore, only where the absence of any nomenclature, or the palpable defects of that in existence, made it necessary for him to resort to his own mint, that he coined his words on the above principles. Thus, finding no word which indicated a professional assistant in the conduct of a law-suit, and which was confined to that meaning, he constructed the term *Litigational Proxy*, for employment in the Principles of Procedure. Instead of using such terms as “Action on the case,” “Assumpsit,” “Qui tam,” “Detinue,” &c., which, though use has made their meanings determinate, are not adapted to express the Author’s scientific division of Law-suits, he adopted such divisions as “Non-Penal and Penal,” “Simple and Complex,” “Original and Excretitious,” “Plurilateral and Unilateral,” “Summary and Chronical,” &c.

SECTION II.

THE GREATEST-HAPPINESS PRINCIPLE AND ITS APPLICATION TO MORALS AND LEGISLATION.

It appeared to Bentham, at an early period of his life, that the Philosophy of human action was incomplete, until some general principle should be discovered, to which the actions of mankind ought all to tend. The way had been so far cleared by the Inductive system of Philosophy. Bacon laid down the grand and general law, that experiment is the means of obtaining a knowledge of what is true; but a question was left to be answered—to what end men, after having achieved the knowledge of what is true, should use that knowledge? It was clear that though experiment might teach us how to achieve that end when it had once been pointed

out, it could not be the means of discovering it; for the very supposal of an end predicates something, not sought after, but predetermined. It was after much thought that he decided that the end in view ought to be the creation of the greatest possible amount of happiness to the human race. The word “utility,” was the first shape in which the end presented itself; ‡ but this term left the question “what constitutes utility” an open one. The answer to—what constitutes utility? and the more abstract principle afterwards adopted, were one and the same. That is useful which, taking all times and all persons into consideration, leaves a balance of happi-

* Works, vol. viii. p. 69.

† Ibid., p. 107.

‡ See the Fragment on Government, Works, vol. i. p. 260 *et seq.*

ness; and,—the creation of the largest possible balance of happiness—became the Author's description of the right end of human actions. The manner in which he stated his axiom was at first in the words, "The greatest happiness of the greatest number," or "The greatest possible happiness of the greatest possible number;" but as there were here two conflicting elements of extent—the intensity of the happiness and the number of persons among whom it is dispersed* the respective limits of which

* For instance, if the question were put, whether a measure which gives twelve people happiness to the extent of 4 each, or eight people happiness to the extent of 8 each is the preferable measure, the former statement of the principle would leave it doubtful which of the two should be adopted, for, though the extent of four be but half of that of eight, twelve is a greater number than eight. By the latter principle the process is simply arithmetic. 8 times 8 being 64, and 4 times 12 only 48, the happiness to the extent of 8 each, distributed among eight people is to be preferred.

Like everything else in Bentham's Philosophy; it is by its reference to practice, and an observation of the extent to which it is acted on, that the direction of the argument thus abstractly stated, will be observed. In cases of distribution, the greatest quantity of happiness is produced where the number among which it takes place is the largest; and almost all human laws have a tendency, more or less strong, to prevent individuals from absorbing in their own persons an exorbitant proportion of the elements of happiness at the disposal of the community. Again, on arithmetical principles, property in the ordinary case removed from one person and given to another, adds a smaller element of happiness to the person who receives it, than that which the person deprived of it loses; hence the laws for the protection of property and vested rights. But the following quotation from a Pupil of Bentham, equally clear in his explanations and happy in his illustrations, will make the matter more distinct: "The latest improvement, therefore, of the philosopher whose long life has been dedicated to the diffusion of the principle,—and of which the present Article has to boast of being the announcement and the organ,—is to dismiss the superfluous 'greatest number,' and declare that the just object of politics and morals, is simply 'THE GREATEST HAPPINESS.' In this manner the magnificent proposition emerges clearly, and disentangled from its accessory. And the accessory proposition is, that the greatest aggregate of happiness must always include the happiness of the greatest number. For the greatest number must always be com-

posed of those who individually possess a comparatively small portion of the good things of life; and if anything is taken from one of these to give to the others, it is plain that what he loses in happiness, is greater than what the others gain. It is the mathematical assertion, that a quantity x is greater in comparison of a small quantity it is taken from, than of a large one it is added to. It is the avowal that half-a-crown is of more consequence to the porter who loses it, than to the Duke of Bedford who should chance to find it;—that a chief portion of the baseness of the rich man who seized the poor's ewe lamb, consisted in taking what caused so much greater pain to the sufferer, than happiness to the receiver."—*Colonel Thompson's Works*, vol. i. p. 136.

In the Deontology there is the following statement on the subject of the Author's abbreviation of his axiom:—

"In the later years of Mr Bentham's life the phrase 'Greatest happiness of the greatest number' appeared, on a closer scrutiny, to be wanting in that clearness and correctness which had originally recommended it to his notice and adoption. And these are the reasons for his change of opinion, given in his own words:—

"Be the community in question what it may, divide it into two unequal parts; call one of them the majority, the other the minority; lay out of the account the feelings of the minority; include in the account no feelings but those of the majority,—you will find, that to the aggregate stock of the happiness of the community, loss, not profit, is the result of the operation. Of this proposition the truth will be the more palpable, the greater the ratio of the number of the minority to that of the majority; in other words, the less the difference between the two unequal parts; and suppose the undivided parts equal, the quantity of the error will then be at its maximum.

"Number of the majority suppose 2001, number of the minority, 2000. Suppose, in the first place, the stock of happiness in such sort divided, that by every one of the 4001 an equal portion of happiness shall be possessed. Take now from every one of the 2000 his share of happiness, and divide it any how

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says, in the Introduction to the Constitutional Code.

When I say, the greatest happiness of the whole community ought to be the end or object of pursuit, in every branch of the law—of the political rule of action, and of the constitutional branch in particular, what is it that I express?—this and no more, namely, that it is my wish, my desire, to see it taken for such, by those who, in the community in question, are actually in possession of the powers of government; taken for such, on the occasion of every arrangement made by them in the exercise of such their powers, so that their endeavours shall be, to render such their cause of action contributory to the obtaining of that same end. Such then is the state of that faculty in me which is termed the will; such is the state of those particular acts or modifications of that faculty, which are termed wishes or desires, and which have their immediate efficient causes in corresponding feelings, in corresponding pleasures and pains, such as, on the occasion in question, the imagination brings to view.

In making this assertion, I make a statement relative to a matter of fact, namely that which, at the time in question, is passing in the interior of my own mind;—how far this statement is correct, is a matter on which it belongs to the reader, if it be worth his while, to form his judgment.*

among the 2001: instead of augmentation, vast is the diminution you will find to be the result. The feelings of the minority being, by the supposition, laid entirely out of the account, (for such, in its enlarged form, is the import of the proposition,) the vacuum thus left may, instead of remaining a vacuum, be filled with unhappiness, positive suffering, in magnitude, intensity, and duration taken together, the greatest which it is in the power of human nature to endure.

“Take from your 2000, and give to your 2001 all the happiness you find your 2000 in possession of: insert, in the room of the happiness you have taken out, unhappiness in as large a quantity as the receptacle will contain: to the aggregate amount of the happiness possessed by the 4001 taken together, will the result be net profit? on the contrary, the whole profit will have given place to loss. How so? because so it is, that such is the nature of the receptacle, the quantity of unhappiness it is capable of containing, during any given portion of time, is greater than the quantity of happiness.

“At the outset, place your 4001 in a state of perfect equality, in respect of the means, or say, instruments of happiness, and in particular, power and opulence: every one of them in a state of equal liberty: every one independent of every other: every one of them possessing an equal portion of money and

But it was not to the announcement of his first principle that Bentham trusted for its adoption, but to the influence it would have on the minds of his readers when they studied the forms in which he brought it out in detail. And this brings us to examine the extent to which the author lays claim to the merit of originality. It was not the principle itself, that constituted his discovery, but his rigid adherence to it in all his expositions—his never losing sight of it, in what he did himself or called upon others to do. He did not say that the world had hitherto been ignorant of such a principle; he found the theory of utility to a certain extent promulgated by Hume, and references to the “greatest happiness” in the works of Beccaria and of Priestley; while something like the Utilitarian Principle is announced at the commencement of the *Nicomachean Ethics*. He found indeed that it was at the root of all systems of religion and morality; that all codes of law were more or less founded upon it; and that it was, in all places and at all times,

money's worth: in this state it is that you find them. Taking in hand now your 2000, reduce them to a state of slavery, and, no matter in what proportions of the slaves thus constituted, divide the whole number with such, their property, among your 2001; the operation performed, of the happiness of what number will an augmentation be the result? The question answers itself.

“Were it otherwise, note now the practical application that would be to be made of it in the British Isles. In Great Britain, take the whole body of the Roman Catholics, make slaves of them, and divide them in any proportion, them and their progeny, among the whole body of the Protestants. In Ireland, take the whole body of the Protestants, and divide them, in like manner, among the whole body of the Roman Catholics.”—*Deontology*, vol. i. p. 328-330.

In connexion with this, the first reference made to the *Deontology*, it may be well to state the reason why this work was not published in the collected edition of Bentham's works. It was collected and published by Dr Bowring, so lately as the year 1834, in two volumes; and as the impression is not nearly exhausted, it was supposed that a reprint in the collected edition would be a waste of funds, which would be better employed in the publication of works from the author's MSS.

* Works, vol. ix. p. 4.

an unseen and unacknowledged guide to human action. But he was the first to bring forth this guide, to prove to the world that it should be followed implicitly, and to show that hitherto, from not keeping their guide in view, men had often wandered from the right path. "The good of the community," "the interests of the public," "the welfare of mankind," all expressions to be found in the mouths of those who talk of the proper ends of action, were so many acknowledgments of the Greatest-happiness Principle, and vague attempts to embody it. There is here an apt parallel with the philosophy of Bacon. Long before his day experiments were made, and thinkers, even in their emptiest theories, in some shape or other looked to experience. Fact was then, as now, the source of knowledge; but for want of an acquaintance with what their source of knowledge really was, men wandered about among vague theories, and Bacon was the first to discover, that wherever experience and the induction from it are lost sight of, there is no check to the errors of thought. In like manner does Bentham show, that, when the greatest happiness of mankind is lost sight of, in the pursuit of more immediate ends, there is no check to the aberration of human action.

There is, perhaps, no better illustration of the operation of the utilitarian principle in minds which are ignorant of, or do not acknowledge its existence, than in the appreciation which Bentham's works have met with by the majority of his readers. His general principle has received few adherents, in comparison with the number who have adopted his detailed applications of it. There is no project of change, or plan of legislative reform, in which he has not kept the greatest-happiness principle in his eye as the end to which it has been adapted; yet there are many who accede to his practical measures, while they repudiate his general principle. Thus, that jurymen should not make oath, each to vote according to his conscience, and then be coerced till they are unanimous; that there ought to be a general register of real property, in which all sales, bur-

dens, and pledges may be entered; that the price paid for the use of money ought no more to be fixed by law than the consideration given for any other contract—are all opinions admitted by a large portion of practical men, who, when their attention is directed to the end to which all these proposals are but means, intimate a distaste of vague theory, and turn their backs upon it. There can be no doubt, then, that had Bentham contented himself with an exposition of his leading principle, instead of giving the world, on so wide a scale, the details of its operation, he would have had far fewer followers than he has: and that, indeed, it has generally been through the influence of his practical adaptation of it, that he has brought his pupils to the adoption of his central principle.

It is a circumstance worthy of remark, that the philosophy of Bentham met with an opponent even in the extent to which its leading principle was practically admitted. The quantity of utilitarianism that was in mankind, had rooted certain opinions so firmly in their breasts, that they took a suspicion of that sceptical philosophy which took them up and examined them, though the examination ended in approval. People lost patience with the system, when they heard its author ask whether theft and falsehood were hurtful to mankind, before he condemned such acts. When it was said that murder, if beneficial to society, would be a virtue instead of a vice, it was indignantly maintained, that under no presumable circumstances could it be anything but what it is—the most atrocious of crimes. That fact was, indeed, one of the most broad and clear cases in which the utilitarianism of the world had made up its mind from the beginning. Almost, in all ages and in all nations, men had leaped at the conclusion without a perceptible interval of ratiocination. It was a startling thing to see so long decided a question called up for trial, and to hear the evidence against it investigated and weighed, before judgment was pronounced, as if there were really room for any dubiety. The feeling was somewhat akin to the popular

cry which, in the case of a public and notorious criminal, tries to bear down the calm deliberation of the judicial tribunal, and is scarcely content when the proceedings end in punishment, because the very weighing of evidence, in such a case, seems to be a trifling with truth which frightens people into the belief that it is possible justice may be got the better of. Viewing them with reference to the question of their popularity, the prudence of some of these illustrations of the utilitarian principle might be questioned. Putting the case that murder would be justifiable if it were for the benefit of the community, was like putting the case, that if that which was bad were good, then it would not be bad. The conclusion was so clearly leaped to, both by the public and the philosopher, that the mere supposititious questioning of it by the latter, looked like a play on words. Yet, all who have followed tissues of abstract reasoning, know how very necessary it is to have clear views of the simpler propositions of a series, as a preparation for the proof of the more complex. That the opposite sides and angles of a parallelogram are equal to each other, seems too simple a statement to require any proof: but, if it were not demonstrated, a link would be lost in the chain of reasoning which shows that the square of the hypotenuse of a right-angled triangle is equal to the squares of the other two sides. Though men admitted the evil effect of murder, they had not followed the utilitarian principle so closely as to see much mischief in condemning a man to death according to law, when a smaller punishment is sufficient: and while theft encountered condemnation almost universal, the number of those who carried out the principle to the condemnation of the wilful accumulation of debts, which the debtor knows he has no chance of paying, was small. In both cases, however, the proof of the simpler proposition was an introductory step to the proof of the more complex.

Having established the pursuit of the greatest happiness as the leading object which all men should hold in view, the next step was, to find what principles

there were in human action to be made conducive to this end. In examining the real state of the actions and impulses of mankind, and going back from particulars to the most general principle of action, the philosopher came to the conclusion, that every human being, in every action which he performs, follows his own pleasure. He had to deal with a multitude of prejudices, in his use of this term, but he would perhaps have hardly propitiated his opponents if he had chosen a new one. The very universality of its individual action was against it as a general term; for every man felt so strongly that what was pleasure to his neighbour was not pleasure to himself, that he revolted against the application of the same word to qualify motives which appeared so distinct. Among a large class of persons, the expression, "the pursuit of pleasure," had inherited the bad reputation which has popularly attended the doctrines of Epicurus. It was connected in some way with sensuality and mere corporeal enjoyment, and stood in opposition to those objects and pursuits which the better part of mankind hold in esteem. In the popular discussions on this subject, there is generally a want of observance of the distinction between pleasure as attained, or, in one word, happiness, and pleasure as an object sought after. The latter is an unknown quantity—the former presents us with the arithmetical results of the experienced pains deducted from the experienced pleasures. Many a man makes himself unhappy; but no man pursues unhappiness, though one may be very unsuccessful in his pursuit of happiness. One man is seen industrious, prosperous, surrounded by a well-educated moral family; his contemporary and class-fellow has been bringing himself gradually to the grave by profligacy—has impoverished himself, and has lost the respect of his fellow-men by the desperate alternatives to which misery has driven him. It is not easy to believe that both these men are in their actions directed by the same motive—the pursuit of pleasure. One man is seen cautiously laying up for himself a depository of future enjoyment,

at the price of present privation; another, yielding to all immediate influences, scatters at once the whole of the material of enjoyment which nature has put at his disposal; while a third is systematically depriving himself of the ordinary appurtenances of human gratification, that he may dedicate them to heaven, or to the relief of those portions of his race who have been less gifted than himself. It requires that one should have a very abstract and unconventional notion of the term happiness, to believe that it is the moving force in each one of these cases.

Perhaps it may serve the purpose of farther explaining the sense in which Bentham used the terms happiness and pleasure, to compare them with those words which more nearly approach to them. In the first place, it is necessary to keep in view an essential difference in the acceptation of the two words. Happiness is applied to the state in which the mind is placed when enjoying a continuity of pleasure: pleasure is applied to each of the individual sensations which, when aggregated, produce happiness. It is generally, therefore, more convenient to use the word, pleasure, when the immediate results of actions are talked of, and the word, happiness, when ultimate and permanent effects are the subject. In popular language, the distinction is sometimes drawn to the extent of contrast, and a man is said to pursue pleasure to the destruction of his happiness. When speaking, therefore, as we are now doing, of the immediate impulse of acts, it is convenient to use the word, pleasure: when we come to the discussion of acts in their general results, the term, happiness, will be more applicable.

The term nearest to being synonymous with pleasure, is *volition*: what it pleases a man to do, is simply what he *wills* to do. By considering it for a moment in the light of mere volition, we separate it from the notion of actual enjoyment—that popular acceptation which is most likely to lead us astray. What a man wills to do, or what he pleases to do, may be far from giving him enjoyment; yet, shall we say that in doing it,

he is not following his own pleasure? A man drinks himself into a state of intoxication: here, whatever may be the ultimate balance of happiness, people can at least imagine present enjoyment, and will admit that the individual is pursuing what he calls his pleasure. A native of Japan, when he is offended, stabs himself to prove the intensity of his feelings. It is difficult to see enjoyment in this case, or what is popularly called pleasure; yet the man obeyed his impulses—he has followed the dictate of his will—he has done that which it pleased him to do, or that which, as the balance appeared to him at the moment, was, in the question between stabbing and not stabbing, the alternative which gave him the more pleasure.

Those hasty acts, the result of sudden impulse, which one afterwards repents of having done because they militate against ultimate happiness, are the operations which people can with least facility ally to the pursuit of pleasure. They cannot imagine a balance struck in the mind in favour of pleasure, in cases which, by their results, and the feeling which the actor afterwards expresses regarding them, have evidently been so much the result of want of consideration. But, unless it be denied altogether that will has any influence in such cases, it cannot be denied, that what the man wills to do is that which gives him, at the moment, greater pleasure than abstaining from it. A man, in a fit of fury, stabs his best friend. The deed followed the impulse as quick as lightning; but was not the will brought into play? if it was not, ask legislators why they make laws for punishing those who give way to their passions—ask them if the fear of punishment has not often been the actual sanction which restrained the assassin's blow, even when the deed he would have committed is one which he would afterwards have repented of? The rapidity of the operation of the will—of the action of choice—is exemplified in every day life. It transcends, in its quickness, the power of self-discernment; and thus, working undetected, its existence is forgotten. A rapid ponman,

quickly writing a letter to his friend, has his volition exercised on the choice of subjects, on the manner in which he is to treat them, on the words he is to use, and on the letters which he is consecutively to set down as the method of spelling these words. On the choice of subjects, and the manner of treating them, the operation of the will may, perhaps, be distinctly perceptible. It is not so distinctly traceable in the choice of words; and in the collocation of letters, succeeding each other at the rate of several hundreds in a minute, it will be quite imperceptible. The acts which are called rash—those which are the effects of sudden volition, are notorious for their malign influence on happiness. The imperfection generally attributable to hasty operations is perceptible in them. By too rapidly making up his mind on the question what is for his pleasure, the hasty man makes a wrong decision, and does that which, in the end, brings him a heavy balance of misery. Sudden acts may be fortunate, but they are not to be calculated upon as the most conducive to happiness, and the suppression of the habit of doing them will be found to be one of the ends of morality. A gambler may make himself rich by a lucky turn of the dice; but the best chance of permanent opulence is in favour of the man who practises a rigid system of industry, honesty, and self-restraint.

The terms, *choice* and *preference*, are useful in explaining the meaning of the word *pleasure*, as used by Bentham, though they are not so completely equivalent as *will*, being only employable where more than one thing is presented to the will, each with its own inducements. Between two courses, which a man has before him, he adopts, from pique or disgust, that which is foolish, wicked, detrimental to his own happiness, and he repents of it afterwards; still, at the moment, it was not less the object of his choice, his preference, his will, his pleasure.

It is in the cases where the instruments of palpable enjoyment are given up by one human being for the sake of the happiness of others, that its common popular ac-

ceptation renders the use of the word pleasure in its philosophical sense least commodious. He who sacrifices self for the good of others will be said to yield to the dictates of duty, of generosity, of humanity, of benevolence, of patriotism, as the case may be; but generosity revolts against attributing to him the selfish motive of the pursuit of pleasure. There is no harm—indeed there is much good—in the terms of eulogy which are applied to the motives of such actions. Bentham was not less conscious of their excellence than other moralists; but in looking at their direct and immediate motive, he found it the same one ruling principle—the pursuit of pleasure—the doing that which it pleases a man to do—the doing that which volition suggests. The misunderstanding of his opinions arose from the defect already stated—the inability of men to see sources of pleasure to others, in things which were not sources of pleasure to themselves. The sources of pleasure, both corporeal and mental, are almost innumerable; and he made them the subject of a most laborious and minute classification, under the title of “A Table of the Springs of Action.”*

It is probable that this list may not be quite complete; and from the nature of such a task, if the accomplishment of a completely exhaustive list were demanded as a condition of the admission of the Utilitarian doctrines, the condition would probably not be fulfilled. It is the less difficult process, and is certainly not an unfair one, to ask the objector to point out any other motive but his own pleasure as actuating any man when he does that which he chooses to do. When Howard found himself possessed of an unappropriated sum of money, the first use for it that suggested itself was a pleasure trip on the continent; but on second thoughts he devoted it to the accomplishment of his benevolent schemes. In popular language, he was said in this instance to have made a sacrifice of his pleasure, or of his enjoyment; and in the case of an ordinary man, had Howard possessed over him the power of appro-

* Works, vol. i, p. 195 *et seq.*

priating to the improvement of prison-discipline, the money which the owner of it had intended to spend on travelling, and had he so exercised his power, that owner would probably feel that Howard had deprived him of a pleasure. But the source of enjoyment and the will to choose it were fitted to each other, and placed in one mind; and who shall say that the choice headopted was not that which gave Howard pleasure? Of a kindred spirit were the whole of the events of Bentham's life: they were a rejection of the more gross and tangible objects of human enjoyment: a recourse to elements of pleasure and satisfaction, for which vulgar and truly selfish minds have no appreciation. Seclusion, temperance, and hard labour were preferred, as the outward and visible signs of enjoyment, to popularity, indulgence, or luxurious ease; and the inward source of satisfaction was the consciousness of doing permanent good to the human race. Of his capacity for appreciating a character like his own, let his opinion of Howard stand as an illustration. "My venerable friend," he says, "was much better employed than in arranging words and sentences. Instead of doing what so many could do if they would, what he did for the service of mankind was what scarce any man could have done, and no man would do but himself. In the scale of moral desert, the labours of the legislator and the writer are as far below his, as Earth is below Heaven. His was the truly Christian choice: the lot in which is to be found the least of that which selfish nature covets, and the most of what it shrinks from. His kingdom was of a better world! He died a martyr after living an apostle."*

It will not increase our appreciation of such men to endeavour to prove that self-gratification was not their rule of action, and that *their* minds were not better suited to derive pleasure from such acts, than those of the more ignoble section of mankind whose elements of enjoyment lie on the surface of the earth they tread. As hopeful a task would it be to prove that the father has

no satisfaction in denying himself the luxuries of life that he may increase his son's fortune, or that a wife cannot in reality suffer pain from seeing her husband pursuing a career of vice, if she be assured of a sufficiency of food and clothing to herself so long as she lives. The self-sacrifices made in domestic life are the cause of wonder to those who, not having like ties, have not the same sources of enjoyment: but it is useless to question, that between the doing and the not doing these acts of self-devotion, the balance of pleasure is felt to be on the side of doing them. There is almost an *experimentum crucis* in some cases where mischief is done by yielding to the pleasures of self-sacrifice. Children spoiled by an over-indulgence, purchased by privation on the part of their parents, are a frequent illustration. To avoid the pain of sympathy, a charitable person parts with money to give it to a mendicant, suspecting probably that he is an impostor and will make a bad use of it, or knowing that indiscriminate almsgiving has a deleterious and degenerating influence on society. Thus, too, will a jury allow a dangerous malefactor to escape and continue his ravages among the community, of which they form a part, because they have not firmness enough to do their duty at the expense of what is called their humanity.

Having found the psychological fact, that each man in all his actions pursues his own pleasure, and laid down the rule that the right end of action is the increase of the sum-total of the pleasure or happiness of mankind, the next question came to be—how the pursuit could be brought to bear upon the end? and he decided that, as a general rule, the happiness of the community would have the greatest chance of enlargement, by each individual member doing the utmost to increase his own. The conclusion, that the pursuit of pleasure should thus be deliberately set down as the proper end of life—the great duty of man—seemed startling to those whose notions of felicity were drawn from its most palpable, but least potent department, sensual gratification. But here again, as in the other departments of his

* Works, vol. iv. p. 121.

system, he appealed to the conduct of all men—to the views of all moralists—as illustrations that he was founding no new system of morality, but merely clearing up that which had, with more or less of deviation, been acted upon and taught in all ages. The first great point to be kept in view is, to distinguish between the pursuit of immediate pleasure, and the doing that which, probably at an expenditure of present pain, will have the effect of securing a balance of pleasure when the whole transactions of a life are wound up. People call the former the pursuit of pleasure—the latter they call the practice of morality. The gambler, the spendthrift, the drunkard, adopt the former course. Heedless of consequences, they snatch at present enjoyment; but before the end of their days the balance of pleasure has turned fearfully against them. The upright, industrious, abstemious man, has braced himself to resist these allurements. *He* has struck the balance accurately at the beginning, and at each passing moment of temptation he keeps it steadily in view. When the opportunities of fleeting enjoyment start up before him, he says, “No; I will pay dearly for it hereafter:” it will conduce to his pleasure afterwards that he has avoided it; and, reflexly, to avoid it is pleasure to him at the moment. When his days are ended, the book of life shows a balance of pleasure—an increase to the stock of the happiness of society, to which he has been an ornament and a benefactor by the acts which have conferred felicity on himself. Moralists and divines may disguise it as they will, but the balance of happiness is always the reward which they hold out for good actions. Be temperate—you will secure health and respect. Make your expenditure meet your income—you will avoid shame and embarrassment. Be liberal—you will have the good-will of mankind, their praise, and their kind offices. When the teacher looks beyond the world and opens up motives on which it is not necessary here to dwell, (for Bentham did not discuss religion in itself, but merely spoke of it as one of the influencing engines of society,) the appeal is still

the same, and happiness in a future state is held out as the reward of virtue here.

If people did not follow their own pleasure, it might be a puzzling question—what morality ought to teach them? but since so it is, that every action they do is done in the pursuit of their own pleasure, the moralist's task is simplified. He teaches them how to avoid mistakes and miscalculations. He shows them how they are to obtain in its greatest quantity that which they are in search of.

It will scarcely be denied that every man acts with a view to his own interest—not a correct view—because that would obtain for him the greatest possible portion of felicity; and if every man, acting correctly for his own interest, obtained the maximum of obtainable happiness, mankind would reach the millennium of accessible bliss; and the end of morality—the general happiness—be accomplished. To prove that the immoral action is a miscalculation of self-interest—to show how erroneous an estimate the vicious man makes of pains and pleasures, is the purpose of the intelligent moralist. Unless he can do this he does nothing:—for, as has been stated above, for a man not to pursue what he deems likely to produce to him the greatest sum of enjoyment, is in the very nature of things impossible.*

In having discovered that it is a search after the greatest attainable amount of happiness, the rule of morality is far from being developed. The difficult problem, What line of conduct will be most conducive to happiness? has to be worked out. The Author, however, believed that he had done much to facilitate this operation by laying before people the ultimate, in place of the secondary objects of morality. He admitted that all the world—both the moral and the immoral part of it—were searching for the same desideratum, but he maintained that they would be more likely to find it, if they did not forget the object of their search by having their attention distracted by the various matters they encountered on their way. He found, that in the search two distinct classes of mistakes were made. Some acted hastily, following the dictates of present enjoyment without weighing the consequences; these were the immoral men. Others, after a laborious investigation,

* Deontology, vol. i. p. 12-13.

divulged schemes, which being acted on, left a balance of pain greater than the pleasure; these were the propounders of false moral doctrines. The object of morality and moral discussions is to show the former the folly of their ways, and to assist the latter in their attempts to discover the right path.

It would be a very palpable mistake to presume that it was the Author's meaning that immoral practices always bring their punishment with them in this world. The problem he works out is one of chances; not of direct cause and effect. He maintains only the possibility of discovering a moral rule, the pursuit of which will give the individual the best chance of leading a happy life. The principle has been thus propounded by an eloquent disciple—

It may not be accordant with experience that in every individual case the man who lives in the breach of moral rules shall, in exteriors at least, be less happy than some other;—any more than it is accordant with experience that every man of eighty will die before every man of twenty-five. On the contrary it may be allowed to be certain, that in some instances the contrary will happen. But what is urged is, that in the same way as it is proveable by experience that a man would be a simpleton, who with all the chances before him, should choose an annuity on the life of an average man of eighty in preference to one of twenty-five,—so it is proveable that a man commits an error and a folly, who, with all the chances to encounter, chooses the quantity of happiness which shall be consequent on a course of immorality, in preference to the quantity he might have obtained by another course. The way in which each of these propositions must be established, is by individual attention to the evidence, that though now and then a man of eighty sees the funeral of a man of twenty-five, or a man of immoral conduct is (in outward appearance at least) more fortunate and happy than some one of opposite character, this does not destroy the general inference that nine times out of ten the event is of a contrary description, and that the man is a blockhead who makes his election the wrong way. If indeed anybody says he sees reason to believe, that men of eighty are on the whole better lives than those of twenty-five, or that immoral men do upon the whole lead happier lives than moral ones, he is at perfect liberty to support his own opinion. All that is insisted on is, that there are reasons sufficient to induce the greatest part of mankind to come to a contrary conclusion.*

It is one of the evils of the imperfection of language as an accurate vehicle of thought, that the full meaning of what is involved in Bentham's views regarding the pursuit of happiness cannot be comprehended by any species of simple exposition: the student will know them best by examining them, inductively as it were, in the various works in which they are practically applied. Among the elements of the greatest-happiness principle, or of the utilitarian principle, he will find characteristics very different from that pursuit of sensual pleasure which popular prejudice attributes to the one, or that hard limitation to what are called the immediately useful and rejection of the ornamental objects of life, attributed to the other. There was no one more fully endowed with the feeling, that everything which lifts the soul of man above the clod he treads, and purifies its elements of enjoyment, tends to the fulfilment of that end which he had set before himself as the right one. The progress of a system of intellectual instruction, the most refined and elevated in its nature which the position of the individual could admit of, was one of his favourite schemes—one towards the practical adoption of which he laboured with a zeal worthy of better success. The gradual removal of the pupil's mind from contact with those objects and practices in which man shows the greatest amount of his animal, and the least of his intellectual nature, was the peculiar moral benefit he anticipated for his system. He was a zealous admirer of what may be called intellectual discipline. He conceived that the minds of youth, in almost all grades, and under all systems of education, were allowed too much relaxation from the bracing influence of severe thought. If it had been in his power, he would have made every man a thinker; he would have taught all men to meditate on the ends of their actions; to check their propensity towards immediate enjoyment, to govern their passions, and to look into the future.† It is a common error

* See the plan of a Chrestomathic System of Education, in the Works, vol. viii. p. 1 *et seq.* See also the Rationale of Reward, in vol. ii. p. 192 *et seq.*: where the different beneficial

* Colonel Thompson's Works, vol. i. p. 231-232.

to proclaim Bentham an opponent of the Fine Arts. The charge was artfully founded on his protest against taxing the poor for national institutions accessible only to the rich;* he was friendly to the devotion of such national funds as were not required for purposes more urgent, to the support of institutions for improving the taste of the people. He was in his own person an accomplished musician, and passionately attached to the pursuit. Towards poetry and painting the bent of his mind did not lead him; but, while he felt that his own intellectual exertions were to be in a different sphere, he denied not the respect due to these arts in the persons of their more eminent professors; and he saw in them great sources of intellectual enjoyment to those whose tastes and habits led them in the direction of such pursuits.†

Those potty sacrifices of selfish inclination, for the pleasure of others, which constitute the rules of good-breeding, politeness, and courtesy, formed part of his system of morality. These are not important acts, taken individually; but collectively they are the materials of which much of the happiness of social man is created.‡ He was not deaf to the greater calls for admiration made by that species of disinterestedness, which makes large sacrifices of what is called personal enjoyment, for the good of

others. He looked on the disinterested benefactors of their species—men rarely occurring, and highly gifted, as those whose greatest happiness was centred in the consciousness of doing good to mankind; and he conceived it right and just that the acknowledgment of their services should be amply given. But these were not the men for whom he could cast his scheme of morality. Greatly as they raise themselves, in the unapproached grandeur of their minds, above the people of the every-day world, it is for these latter that codes of morality must be constructed; it is to the size of such minds that they must be fitted. It is useless to ask whether it would be better that men should find their chief enjoyment in something higher than the usual objects of ambition; suffice it that experience shows these to be the ruling motives, and therefore the instruments with which the moralist must act. He who addresses himself only to Howards and Washingtons, leaves several millions of well-intentioned men, with narrower minds and lower objects of ambition, unguided. The economy of the world would be different from its present constitution were it otherwise. “The virtue of beneficence, though its objects embrace all mankind, can be exercised to a very limited extent, and, as applied to any single individual, yet narrower is its sphere of action. And this is well;

objects of encouragement are discussed. See also vol. i. p. 569 *et seq.*: vol. viii. p. 395 *et seq.*

* See Works, vol. ix. p. 451.

† See Works, vol. i. p. 317; vol. ii. p. 253 *et seq.*: vol. iv. p. 18; vol. x. p. 32.

‡ The rules of politeness are discussed in “The Deontology,” vol. ii. p. 132 *et seq.* The subject is commenced with the following remarks:—“The dependence of man upon his fellow men is the sole source of the extra-regarding, as it is of the benevolent principle; for, if a man were wholly sufficient to himself, to himself he *would* be sufficient; and as the opinions and conduct of others towards him would, by the supposition, be indifferent to him, no sacrifice would he make to obtain their friendly affections. In fact, such sacrifice would be but a waste, and such waste would be a folly.

“Happily for each, happily for all of us, the human being is differently constituted. Of man’s pleasures, a great proportion is dependent on the will of others, and can only be possessed by him with their concurrence and co-operation. There is no possibility of disre-

garding the happiness of others, without, at the same time, risking happiness of our own. There is no possibility of avoiding those inflictions of pain with which it is in the power of others to visit us, except by conciliating their good will. Each individual is linked to his race by a tie, of all ties the strongest, the tie of self-regard.

“Dream not that men will move their little finger to serve you, unless their advantage in so doing be obvious to them. Men never did so, and never will, while human nature is made of its present materials. But they will desire to serve you, when, by so doing, they can serve themselves; and the occasions on which they can serve themselves by serving you are multitudinous. The intelligent will catch at opportunities which escape the eyes of the vulgar; and in these mutual services there is virtue, and there is little virtue beyond them; and happily of such virtue, there is more than those who do not possess it are willing to acknowledge or able to believe.”

for, if every man were disposed to sacrifice his own enjoyments to the enjoyments of others, it is obvious the whole sum of enjoyment would be diminished, nay, destroyed. The result would not be the general happiness, but the general misery.* Again—"Take any two persons, A and B, and suppose them the only persons in existence: call them, for example, *Adam* and *Eve*. *Adam* has no regard for himself; the whole of his regard has for its object *Eve*. *Eve*, in like manner, has no regard for herself: the whole of her regard has for its object *Adam*. Follow this supposition up: introduce the occurrences which, sooner or later, are sure to happen, and you will see that, at the end of an assignable length of time, greater or less, according to accident, but in no case so much as a twelvemonth, both will unavoidably have perished."†

It is not inconsistent with an appreciation of disinterestedness, to hold that mankind would not be advanced but deteriorated, if all the shopkeepers deserted their counters to revolve schemes for the public good. The produce of the selfish industry of commonplace moral men and good citizens, is the fund with which philanthropy deals on an extensive scale. Aggrandizing, money-getting Britain, gave twenty millions for the emancipation of slaves: how could such an act be accomplished by a nation of Aristides and Epictetuses?

Bentham's appeal to the practice of mankind was unsuccessful in this respect, that, in the separate course of action of the virtuous and the vicious man, there were so many apparent contrasts, that it was very difficult to find any common element in their motives. But even when it was explained that the former made a sacrifice of the present to the future, it did not appear that he encountered and overcame difficulties which the vicious man failed to defeat, in anything like the proportion in which the two differed from each other in the quality of goodness. "The one man," it would be said, "is wicked, and

the other is virtuous; but if wickedness be a yielding to the temptations of immediate appetite, and virtue be the resistance of them, the virtuous man's life must be a continual up-hill struggle. Now we see none of this: he goes on easily and naturally; he makes no great effort to be virtuous—not even so great an effort as that which his vicious neighbour makes, and makes in vain—to reclaim himself: it must just be the natural tendency of the one to be a good man, and of the other to be a bad man." It is undoubtedly the case, that there are physiological and psychological differences, which will make the avoidance of a given act a matter of greater effort on the part of one man than on that of another; but it does not the less follow, that there is a measure of self-restraint at the command of both, and that the individual will be better and happier if it be exercised. The circumstance which misleads the world, is the ease with which self-restraint is accomplished after it becomes a habit. The drunkard must tear himself from his stimulant, with a violent effort; but the man who has overcome the first temptation to indulgence meets the recurrence with quiet ease.

In proportion as a man has acquired a command over his desires, resistance to their impulse becomes less and less difficult, till, at length, in some constitutions, all difficulty vanishes. In early life, for example, a man may have acquired a taste for wine, or for a particular species of food. Finding it disagree with his constitution, little by little, the uneasiness attendant on the gratification of his appetite become so frequent, so constantly present to his recollection, that the anticipation of the future certain pain gains strength enough to overpower the impression of the present pleasure. The idea of the greater distant suffering has extinguished that of the lesser contemporaneous enjoyment. And it is thus that, by the power of association, things, which had been originally objects of desire, become objects of aversion; and, on the other hand, things which had been originally objects of aversion, such as medicines, for instance, become objects of desire. In the case above referred to, the pleasure not being in possession, could not, of course, be sacrificed—it was non-existent; nor was there self-denial in the case, for as the desire which had originally been calling for its gratification was no longer in existence, there remained no demand to which denial could be opposed. When things

* Deontology, vol. i. p. 208.

† Works, vol. ix. p. 192.

are in this situation, the virtue, so far from being annihilated, has arrived at the pinnacle of its highest excellence, and shines forth in its brightest lustre. Defective, indeed, would that definition of virtue be, which excluded from its pale the very perfection of virtue.*

But the main difficulty which has been raised against the Greatest-happiness principle, is in the allegation, that each man, in pursuing his own greatest happiness, will sacrifice that of others; and that to call upon a man to pursue his own greatest happiness in this world is simply inviting him to pillage his neighbours of their proper fund of felicity. The answer to this is the same plea on which the captain of a ship, which has run short of provisions, would recommend all the crew, both weak and strong, to submit to an arrangement for short allowance. To A and B alone it would be their greatest happiness, perhaps, to have the run of the ship's store, but there are C, and D, and E, and F, with the same inclinations counteracting them; and though A and B might resist all the calls of humanity and sympathy, and might be even able, at the moment, to carry their point of preference by force, they would run the risk of a final accounting with the law. All, therefore, see that it will be their greatest happiness to make an average division; and good ship-economy will show how this is to be accomplished on such a system as to make an equal distribution, keeping in view the number of the crew and the time they are likely to be at sea. Just so is it in the world at large. Each man feels that the best security for himself getting a share of happiness, is to give way to a certain extent to his neighbour. Such is the habit more or less in every portion of the globe; and it is in the countries where practice has settled the proportion, of how much should be kept and how much given away, with the greatest accuracy, that the end of morality has been best accomplished. The strongest counter-illustration which an opponent could find, is, perhaps, that of a despotism; but even here the principle is followed, though, according to our Author's opin-

ion, very barbarously and unsatisfactorily. If the despot presides over a docile people who will not rebel, it is a sign that they prefer the ease of submission to the exertion of independence, and they are following their happiness in their own way. Among such a people, the temptation to play the pranks to which despotism is liable, is greatest, and, to say the truth, does least harm. But if an autocrat were calculating what course would produce him, on the whole, the greatest happiness, it is believed that he would not find it to be in roasting his subjects before slow fires, or skinning them alive, or hunting them with blood-hounds; and that the despot who has taken the best estimate of a happy reign, is he who has resolved to make his sway wise and beneficent; to do justice and to love mercy. But it is seldom that the embers of the spirit of resistance have been so completely extinguished that no gust will waken them into a blaze; and more or less, the fear of resistance holds the despot in awe, providing in his person an illustration, though certainly but a rudely developed one, of the counteraction which is supplied by the universality of the pursuit of self-enjoyment.

There can be no better illustration of the wide embracing influence of what has been denounced as "the selfish system," than its extension not only to all classes of mankind, of whatever colour or persuasion, but to every living thing to which the Deity has given, along with animal life, the capacity of physical pain and pleasure. Bentham was a strenuous supporter of the legislative protection of the brute creation from cruelty. † Perhaps in his own case he needed no train of philosophical deduction to teach him the duty and pleasure of treating them with humanity; but he thought their claims not the less worthy of attention when he could place them on the ground of self-interest. He believed that it was the interest of mankind at large to suppress all indulgence in cruelty, because the habit of being cal-

* Deontology, vol. i. p. 144-5.

† See the Works, vol. i. p. 142-143, 562; vol. x. p. 549-550.

lous to animal suffering propagates itself in crimes of violence and brutality—a phenomenon which will have to be farther noticed in its relation to the subject of Punishment. In another form he inculcated the cause of humanity on grounds of self-interest, by displaying the high intellectual nature of the enjoyment derived from its exercise.

Bentham made a rigid analysis of the various forms in which the fear of consequences check a man in the pursuit of what may be his own individual pleasure; and having ranged and grouped them, he divided them into four classes and called them sanctions—the chains, as it were, which bind a man from following his own wild will. These are, 1st, The Physical Sanction, viz., the bodily phenomena, which, in the course of human conduct, arise from certain classes of acts, and punish the individual by the painful sensation created, or reward him by the pleasurable. Disease produced by dissipation—health nourished by temperance and exercise, are the most common and the broadest developments of this sanction. 2d, The Political Sanction, which is in other words the law of the land, created for the punishment of offences and the protection of the virtuous. 3d, The Moral Sanction, which is the operation of the moral habits of the state of society he is in, so far as it affects the individual—the difference between this and the legal sanction will be afterwards particularly explained, because the two together occupy the greater part of Bentham's labours. The fourth is the Religious Sanction, acting through the Anticipative operation of future rewards and punishments.* The proper direction of these sanctions constitutes the field of labour of a man who would do good to his species. The medical man—not he who merely cures diseases individually as they are presented to him—but he who investigates them in the direction of cause and effect, and gives the world the benefit of his discoveries, is a la-

bourer in the cause of the proper end of the Physical Sanction. He discovers the sources of disease, leaving probably to others the task of observing how much happiness a man sacrifices by encountering it, and how much happiness he will save by avoiding it. The moral philosopher is the man who deals with the moral sanction. As to the legal sanction, there are few men, from the emperor down to the non-electors wearing a party badge, who has not some influence in its operation; and a right influence is developed in the making of good laws, a wrong in the making of bad. The influence of the religious sanction is also, more or less, in all men's hands, but chiefly in that of the clergy. It is, under some circumstances, the most potent, either for good or evil. Of its operation in the former shape, no illustration will be needed in a Christian land. For the latter, we can look at all the crimes which have been produced by religious influences,—the great tragedy from which Christianity dates, the Massacre of St Bartholomew, the Inquisition, the murder of Archbishop Sharp, the persecution of the Irish Catholics.† Of the operation of the sanctions, the following is an illustration from the Deontology—it is a sort of narrative adaptation of Hogarth's Industry and Idleness. It will be observed that it admits of a fifth sanction—the social—which the author seemed to consider might either be viewed separately, or as a branch of the moral.

Timothy Thoughtless and Walter Wise are fellow apprentices. Thoughtless gave in to the vice of drunkenness; Wise abstained from it. Mark the consequence.

1. Physical sanction. For every debauch, Thoughtless was rewarded by sickness in the head; to recruit himself he lay in bed the next morning, and his whole frame became enervated by relaxation; and when he returned to his work, his work ceased to be a source of satisfaction to him.

+ “Fanaticism never sleeps: it is never glutted. It is never stopped by philanthropy, for it makes a merit of trampling on philanthropy. It is never stopped by conscience, for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour—fanaticism has nothing to oppose it.”—*Works*, vol. i. p. 75, note.

* For the Exposition of the Sanctions, see *Deontology*, vol. i.; *Works*, vol. i. p. 14 *et seq.*; iii. 290; vi. 18 *et seq.*, 260 *et seq.*

Walter Wise refused to accompany him to the drinking table. His health had not been originally strong, but it was invigorated by temperance. Increasing strength of body gave increasing zest to every satisfaction he enjoyed: his rest at night was tranquil, his risings in the morning cheerful, his labour pleasurable.

2. Social sanction. Timothy had a sister, deeply interested in his happiness. She reproved him at first, then neglected, then abandoned him. She had been to him a source of great pleasure—it was all swept away.

Walter had a brother, who had shown indifference to him. That brother had watched over his conduct, and began to show an interest in his well-being—the interest increased from day to day. At last he became a constant visitor, and a more than common friend, and did a thousand services for his brother, which no other man in the world would have done.

3. Popular sanction. Timothy was member of a club, which had money and reputation. He went thither one day in a state of inebriety; he abused the secretary, and was expelled by an unanimous vote.

The regular habits of Walter had excited the attention of his master. He said one day to his banker—The young man is fitted for a higher station. The banker bore it in mind, and on the first opportunity, took him into his service. He rose from one distinction to another, and was frequently consulted on business of the highest importance by men of wealth and influence.

4. Legal sanction. Timothy rushed out from the club whence he had been so ignominiously expelled. He insulted a man in the streets, and walked penniless into the open country. Reckless of everything, he robbed the first traveller he met; he was apprehended, prosecuted, and sentenced to transportation.

Walter had been an object of approbation to his fellow-citizens. He was called, by their good opinion to the magistracy. He reached its highest honours, and even sat in judgment on his fellow apprentice, whom time and misery had so changed, that he was not recognised by him.

5. Religious sanction. In prison, and in the ship which conveyed Timothy to Botany Bay, his mind was alarmed and afflicted with the apprehension of future punishment—an angry and avenging Deity was constantly present to his thoughts, and every day of his existence was embittered by the dread of the Divine Being.

To Walter the contemplation of futurity was peaceful and pleasurable. He dwelt with constant delight on the benign attributes of the Deity, and the conviction was ever present to him that it must be well, that all ultimately must be well, to the virtuous. Great, indeed, was the balance of pleasure

which he drew from his existence, and great was the sum of happiness to which he gave birth.*

There are two main objects in view, in those of Bentham's works which are intended to influence human action—the direction of the Moral, and the direction of the Legal Sanction. The one is to instruct the individual as to what he ought to do—the other is to instruct the legislator what he ought to enforce and restrict. Where the former has been the end in view, the science has been denominated *Morals or Ethics*—by Bentham it was called *Deontology*, from the Greek *το δειον*, That which should be, or which is right. Where the latter end is held in view, the science is called *Politics or Political Philosophy*, and embraces within it the art and science of Legislation. To this department of his general system for the regulation of human actions, by far the greater part of Bentham's works have been devoted. Although the Greatest-happiness principle be the end in view of all the author's writings, whether they instruct men how to direct their own individual actions, or teach them how to make rules for the action of others, yet there is a broad demarcation between these two subjects, beginning at the very root of both of them. That which it may be each man's duty to do, it may not be right for each legislator to enforce upon his subjects, because the very act of enforcement may have in it elements of mischief to the community, preponderant over the good accomplished by the enforcement. In other words, it may tend to the greatest happiness of society, that a man should voluntarily follow a certain rule of action; but it may be injurious to the happiness of the community in general, to compel him to follow such a rule if his inclination be against it. For instance, in the Defence of Usury, the lending and borrowing of money at high interest, for the purpose of improvidently ministering to extravagance, is condemned; but, on the other hand, it is found that the laws for suppressing usurious transactions are so mischiev-

* Deontology, vol. i. p. 118-121.

ous in their effect, that they too are condemned for precisely the same reason—their malign influence on human happiness. Thus it is, that the rule of action for the individual, and that for the legislator, are kept distinct from each other; and it is shown by Bentham, that much of the mischievous legislation which he attacks has its origin in this distinction being overlooked. Legislators forget that they have to strike two balances, and not one only, before they act. The first arises out of the question, whether a given course of action is beneficial to the human race; and when this is answered in the affirmative, there comes the second, and frequently overlooked question, whether the enforcement of it, by any laws within the power of the governing authority to put in practice, will likewise show a balance of benefit. Moreover, as legislators often forget to strike the second balance, they also often come to a general conclusion without taking the two seriatim, and, either omit altogether, or fail in taking a due estimate of the first. But it is clear that the law which is made without the first balance being struck, as well as the second, must be unapt. Unless it be first settled that the thing proposed to be done would be good if done voluntarily, there is no room for propounding the question, whether it can be advantageously enforced. It thus occurs, that the field of Deontology embraces within it the field of legislation, and that the two are not co-extensive, the latter being smaller than the former. From this want of co-extensiveness there arise mistakes in arguing from the latter to the former. The Law is a choice of evils, because coercion is itself an evil. This element of evil is not inherent in a man's voluntary acts, and, therefore, in them, no allowance can be made for it. If, therefore, a man square his voluntary morals by the law, he may act on a totally erroneous estimate of what they should be. This he is liable to do, even in the case of the law being deduced from a moral system abstractly accurate; and the circumstance, that legislators are liable

to make mistakes and erroneous deductions, increases the chances against his being right.*

In pointing legislation towards the distribution of the greatest possible amount of happiness among mankind, the chief difficulty was found to consist in the adjustment of the proper proportions in which certain objects of the law, to some extent conflicting, should be respectively aimed at. These objects Bentham classified as,

Security,
Subsistence,
Abundance,
Equality.

These have all to make, to a certain extent, sacrifices to each other, and the source of difficulty is in the adjustment of these sacrifices. There can be little happiness in a state where there is no security for property; but, on the other hand, if the right of property were so absolute, that one portion of the population should be permitted to starve to death ere the property of those who happen to be richer can be touched, it is clear that there will be much misery in such a country, and that a feeling of unhappiness, most vividly experienced by those who are subjected to actual want, will spread upwards, in the form of apprehension, among those who have more or less chance of being involved by the revolutions of the wheel of fortune in such a calamity. Hence comes the necessity for a provision for the poor, that the unfortunate may be preserved from death by starvation. But the principle of security to property and industry, on the other hand, demands that this provision be so regulated, that it shall never become an inducement to able-bodied men to live upon the property of others instead of resorting to honest industry. As the Author happily says, "The treasure of the comparatively rich is an insurance office to the comparatively indigent;" but care must be taken that the Insurer be not bound

* The best exposition of the Greatest-happiness principle is, perhaps, in the Introduction to the Constitutional Code, in vol. ix. of the Works. See also vol. iv. p. 537 *et seq.*, and see the Index to the Works, *vide* Happiness.

to pay till the calamity he insures against has occurred. The law supplies this insurance office to the public by favouring abundance—allowing means for the accumulation of capital, and protecting it when it is accumulated. The various advantages accruing from the existence of capital are for consideration under the head of Political Economy.

The principle of equality has a rivalry, to a certain extent, with that of abundance. The more extensively property is distributed, the more happiness does it produce; for the amount of felicity which each person enjoys is not increased with the relative proportion of his riches. A may have nine times the riches of B without having twice as many sources of enjoyment. It would thus conduce to general happiness if there were many small fortunes and few large; but here security and abundance come in for their claims. Unless men be assured in the enjoyment of their wealth, they will not exert themselves to increase it; and that abundance, so beneficial to the community, will fail to be created. But, on the other hand, the law produces distinct mischief by favouring or compelling the accumulation of property in the person of individuals. The former it does in the hereditary system—the latter in the law of Entail. The law, besides its direct effect, has its bearing on the habits and opinions of society, and the malign influence of the hereditary principle has spread itself beyond the sphere of its mere legal enforcement. Legislation, instead of favouring the accumulation of a family property in favour of one member, should have directed an equal distribution within certain bounds; and thus, both in law and in national habits, equality would have been the rule, and the hereditary principle the exception.*

The Greatest-happiness principle may perhaps receive elucidation from some account of the most important of the subsidiary principles which its Author deduced from it,—viz., The Non-disappointment or Disappointment-preventing principle, developed in measures tending to obviate

disappointment, and the pain with which it is always accompanied.

Among the cases in which he found that legislation, in its hasty and empirical course, had neglected to strike the balance between good and evil with sufficient minuteness, was that in which small clusters of individuals came to be affected by general legislative measures. He kept in view, that individual interests are the units by the aggregation of which the collective term, “the public interest,” is created, and that there is no living being whose certain or probable welfare, in relation to any proposed measure, should not be thrown into the scale when its disadvantages are weighed against its advantages.† The principle, that private interests should yield to the public good, he thus so far modified, that from the amount of any public good done, he deducted whatever private interest might be injured. In estimating the evils done to individuals, he examined minutely the pain caused by disappointment, and found it to be, on arithmetical principles, greater in the average case than the pleasure of acquisition, and than the pain (if it can be so called) of non-acquisition. The income of A is taken from him and given to B—A loses his all, but B gets merely an addition to what he had before. The whole pleasure in the possession of a source of livelihood is removed from the one; the other only receives the secondary pleasure of an increase. Let A’s income be dispersed among the public—he loses all, and is eminently unhappy; while that which constituted the source of his former content is distributed in portions so minute, that the amount of happiness produced by it may be scarcely perceptible. On the other hand, so long as A is left in the enjoyment of his income, according to the prospects held out to himself and to society at large, from the first,—as no man expected to obtain any of it, no one is disappointed by its not being distributed, and he himself is content. The non-disappointment principle is the great foundation of the

* See Works, vol. i. p. 301 *et seq.*; ix. 11 *et seq.*
Vol. I.

† Works, vol. ii. p. 252.

sacredness of property. More injury than good is done, by allowing either individuals, or the public at large, to interfere with that which a man has, under the sanction of the laws, been allowed to call his own. The pain of disappointment to the proprietor is the primary evil of attacks on property. The secondary evil is the alarm to society at large,—the dread which each individual has, that he too may be the victim of spoliation.

Like the other great principles expounded by our Author, the non-disappointment principle pervades society in all its acts; but it was his task, by a minute analysis of its principle and operation, to discover cases in which its application had been neglected and misunderstood. He applied it to the principle of compensation for offices abolished, or for any other injury caused to individuals by the march of improvement. He was in favour of allowances to those whose official emoluments were affected by law reforms,* and to the owners of slaves on emancipation;† and he even hints at such a concession to the owners of proprietary seats in parliament, in the case of their disfranchisement by parliamentary reform.‡ In the estimate of the incidence of good and evil on society at large, he saw that there was a clear gain in a government following out the principle, that when a man steadily and honestly follows his calling, and makes his livelihood by it, he should feel the assurance, that no act of the government of his country shall remove it from him. But he found a secondary advantage in the principle of compensation: it has a tendency to remove the opposition perpetually operating against improvement, in the sinister interests of those who benefit by abuses. Pay off the incumbents, is thus a liberal policy, by which those who are most conversant with the operation of any institution, are relieved of a temptation to overlook or defend its defects.§ The system is capable of abuse. Offices might be created for the compensation which

will accrue on their speedy abolition. But this is an evil as much to be guarded against on true utilitarian principles, as the other; and it has to be remembered, that a people who take upon themselves the burden of compensation, are the more likely to criticise the propriety of the institution created. The countries most liable to government abuses of every description—despotic and disorganized states—are, at the same time, those where the interest of individuals is most ruthlessly overwhelmed in national changes.

Bentham extended this principle to Finance, holding that, apart from other elements of good or evil, it made indirect preferable to direct taxation. It is better that a deduction should accrue to a sum of money before it reaches the possession of him for whom it is destined, than that, after being in his hands, a portion of it should be withdrawn. The operation of the principle in this department he found to be limited. There were but few cases, such as that of the legacy duties, in which the deduction could be truly said to be practicable before the money was in possession—in the case of an annual salary, the mere knowledge of the amount is nearly equivalent to possession, and a deduction before payment differs little from a charge after payment. A tax on consumption is another method in which the principle may be brought to bear. The tax is paid, in the first place, by the dealer, to whom it is, in reality, not a tax, but a portion of capital expended in the form of duty which otherwise he would have to expend on commodities. The purchaser pays dearer for the commodity; but it is maintained that, in doing so, he does not experience the same feeling of hardship which would arise if the sum charged as duty were separately taken from him after his purchase has been made. In the general case, a direct tax is a thing obligatory; a tax on consumption, unless it be on the absolute necessities of life, calculates on its voluntary adoption by the purchaser.|| This species of tax has, it is true, its defects, in as far as it may impede or disturb commerce and

* See Works, vol. iii. p. 325; v. 505.

† Ibid. vol. i. p. 346. ‡ Ibid. vol. iii. p. 533.

§ Ibid. vol. v. p. 277.

|| See Works, vol. ii. p. 573, 580.

manufactures; but these are objections belonging to Political Economy.

A plan was proposed by Bentham for raising a revenue by the application of this principle to the law of succession, and in arranging his plan he inquired into the principles of succession, and the extent to which the existing systems in Britain are founded on reason. Whatever theorists may promulgate on the anomaly of a man dictating for his property after death, or on the principle that when the man is done with the use of his goods they should go to the state, the practice of mankind in all places and times has supported a law of succession; and an examination, on the principles of the utilitarian philosophy, vindicates the practice as a right one. He who has brought children into the world is the person against whom there is the strongest claim to support them, and the law justifies this claim by giving them his property on his death. If children have been brought up in the gratification of certain tastes and luxuries; in short, in a particular rank of life and with a certain expenditure—it is better, so long as no one is injured by it, that they should continue in the same course. The most simple and the least injurious method of giving them the means of doing so, is by continuing in their possession the wealth by which the luxury and rank are purchased, on the death of its previous holder.* Let the daughter of a labourer be left without any pecuniary provision—it is nothing but what she expected, she suffers no hardship or disappointment, and goes forth to her labour with a glad heart. Let the daughter of a wealthy landowner or merchant be left in the same position—a fearful calamity has fallen upon her—a calamity undeserved, and heavier than the punishment of many a formidable crime. So much for the case of the individuals; but the benefit of succession operates also on the public at large. The providing for a family, or, even if a man have no family, the faculty of destining his money to what purposes he pleases, is one of the greatest induce-

ments which he can have to make and to save property—the one an increase of the general capital of the community, the other a preservation of the increased capital from dispersal. Were it not for the wife and children he will leave behind him, there are many men taxing their heads and hands to great efforts who would be idle and worthless; there are many founders of great manufacturing and commercial projects who, but for such a motive, would never have thus distributed the means of industrial wealth around them.

But it comes to be a question whether the law has not carried the operation of succession beyond the bounds within which it is useful. Between the children who have shared in their parents' fortune, and the distant relation who never heard of the wealth thrown at his feet, till some scrutinising lawyer made the discovery of his relationship, there is the greatest possible difference: there are strong reasons for the law of succession operating in the one case—none for it in the other. On this principle Bentham founded his plan that succession should open only to near relations, and not to distant. If the law were once so established and known, there could be no disappointment among distant relations, (excepting those to whom the law was *ex post facto*;) but even independently of a knowledge of the law, there are multitudes of cases where the distance of the relationship precludes expectation. It is true that a man may adopt a distant relation—the same who, in the present course of succession, would be his heir—as, a member of his family, partaking in his luxuries, and acquiring habits, a sudden check on which would be a hardship. This is true; but in the same manner may a man adopt a stranger; and in either case there is proposed to be open to him the right of bequest. The line which Bentham proposed to draw, is that of the forbidden degrees. He suggested that, where the nearest relation to the deceased is beyond those degrees, there should be no succession, except through bequest. He found in this plan two secondary advantages; it would cut off a great source of expen-

* See Works, vol. ix. pp. 16, 17.

sive litigation, (of which the country, in providing judicial establishments, bears part of the expense,) in the enforcement of distant claims to relationship through obscure and conflicting evidence; and it would afford an inducement to men having property to leave behind them, to marry. The plan is developed in the tract called *Escheat vice Taxation*.*

SECTION III.

THE PURSUIT OF TRUTH.—FALLACIES.—PRINCIPLES OF EVIDENCE.

BELIEVING that falsehood was one of the main instruments of evil to mankind—that a regard for perfect truth was one of the greatest safeguards against the various means by which sinister interest could operate to the evil of society, Bentham made war against mendacity in every form in which it could raise its head. He found that the ingenuity of sinister interest had here covered society with a net-work of evil, through the meshes of which it required the most vigorous efforts of the understanding to clear a way. He found a popular notion, that it was in certain words used, and not in the act of deceiving, that the offence of falsehood consisted. The shepherd in the fable, who promised to the stag not to give information of his hiding-place, did not tell the hunters where it was, but pointed with his finger to the spot. It was the interest of persons who had done such deeds to remove the odium from the act of betrayal to that employment of false words called a lie; but in Bentham's view, men might stumble among the ingenious intricacies of words, and he found no criterion of criminality but in the thing done through their means. Words, the simple purport of which would convey a falsehood, may be uttered in a manner and with a purpose to put the party right, and keep him from deception. On the other hand, words signifying the truth are often made a mere effectual cover to the falsehood they are intended to convey. A newspaper, the other day, wishing to show that certain operations abroad had been carried on in consequence of instructions from home, stated that such instructions had

been sent out, but did not state that they had not arrived. Almost every species of commercial deception is carried on in words that are in themselves true. When emigrants are enticed to embark with their little property for a colony where they are ruined, the inducement is, in general, some perfectly correct description of luxuriant vegetation and salubrious climate, which is all deceptive, because it is not stated that there is no means of making the natural profusion available—that there is no commerce with the place—no system of inland conveyance, and no harbour. An auctioneer lately advertised an estate for sale in Canada, "containing a quantity of fine old timber," in the hope that some one who did not know that timber in Canada is worth less than nothing, might act on the advertisement. A common method of deceiving without words is, for a man to act with a political party, in its arrangements preparatory to some great conflict, for the purpose of being counted too good a friend to be questioned, and then desert it; on the plea that he never promised to support it. All these acts have in them whatever there is of evil in a lie. It has become the practice to refer to them as the "speaking the truth, but not the whole truth," an unsatisfactory expression, which seems to intimate that they have in them at least a portion of the virtue of truth. Let them be looked at simply in the result intended to be accomplished, and so judged, and then they will be seen clearly to be in every respect equivalent to lies.

As the effects of falsehood are of the most varied character, ranging from the highest crimes to the most paltry and unpunishable social frauds, there cannot

* Works, vol. ii. p. 585.

be any measure of punishment for it, (of punishment whether as administered by the Law, or by the opinion of society,) but in taking the measure of the offence which it is made the instrument of perpetrating.* A lie producing death is the offence of murder; a lie giving an undeserved character of excellence to an article of commerce for the purpose of making it saleable, is but a petty fraud. Can it be said that these offences are equal in magnitude? Yet if the offence be in the lie, and not in the effect produced by it, the criminality of the two cases is precisely co-extensive, for the verbal falsehood is as distinct in the one as it is in the other. On this point Bentham found the laws for the punishment of judicial perjury defective. The criminality was thrown on the ceremony, with which the falsehood is decked, and not on the effect produced by it. To tell a falsehood in a court of justice cannot be, under any circumstances, other than a crime of high magnitude: but between the case of a man swearing away the life of another, and that of a man swearing five pounds away from its right owner, there is surely a greater difference than between the saying the lie with, and saying it without certain formalities. Bentham made an accurate analysis of judicial falsehoods, for the purpose of measuring the extent of their criminality by that of their respective evil effects, and he introduced the new distinction between temerarious and mendacious falsehood. Among those who looked merely at the words spoken as the offence, when it turned out that the speaker did not anticipate the meaning that would be attached to them, or would not have uttered them if he had known them to be false, he was considered innocent. But Bentham, on the principles on which he who fires a pistol into a church, or drives furiously through a crowded street, is held responsible for the mischief he may occasion, did not see any reason why the individual who maims or slaughters the person or reputation of another

by rash words, should not be equally responsible.†

On an examination of the various processes through which the truth, in regard to the merits of human actions, is obscured, the common practice of giving a good or bad character to motives, according to the feelings of the person who is speaking of them, presented itself as one of the most common devices of falsehood. Results are open and susceptible of examination—motives are hidden in the bosom of the actor; hence those who love darkness rather than light will more readily exercise their ingenuity in giving a character where its truth or falsehood cannot be detected, than in examining that which is spread before the world.

"It is the act, and not the motive, with which we have to do; and when the act is before us, and the motive concealed from us, it is the idlest of idling to be inquiring into that which has no influence, and forgetting that which has all the real influence upon our condition. What acts, however outrageously and extensively mischievous, but may be excused and justified, if the motives of the actor, instead of the consequences of the act, become the test of right and wrong? Perhaps, there never was a group of more conscientious and well-intending men than the early inquisitors; they verily believed they were doing God service; they were under the influence of motives most religious and pious, while they were pouring out blood in rivers, and sacrificing, amidst horrid tortures, the wisest and best of their race. Motive, indeed! as if all motives were not the same,—to obtain for the actor some recompense for his act, in the shape of pain averted, or pleasure secured. The motive, as far as that goes, of the vilest, is the same as the motive of the noblest,—to increase his stock of happiness. The man who murders, the man who robs another, believes that the murder and the robbery will be advantageous to him,—will leave to him more happiness than if he had not committed the crime. In the field of *motive*, however, he may make out a case as commendatory of his conduct, as if he were the most accomplished of moralists. To say that his motives were ill-directed to his object, is to reason wisely with him; to say that his motives had not the object of obtaining for himself some advantage, is to deny the operation of cause on effect. There is,—and the existence of the disposition is a striking evidence of the tendency of men towards despotic assertion,—there is by far too great a willingness to turn away from the consequences of conduct in order to inquire into its sources. The inquiry is a fruitless one, and were it not

* See "Swear not at all," in Works, vol. v. p. 187 *et seq.*; vol. vi. p. 297.

† See Works, vol. vi. pp. 280, 292 *et seq.*

fruitless it would be useless. For were motives other than they are,—were they fit and proper evidence of the vice or virtue of any given action,—it would not be the less true, that opinion could ultimately have no other test for judgment than the consequences of that action. A man's motives affect nobody until they give birth to action; and it is with the action and not with the motive, that individuals or societies have any concern. Hence, in discourse, let all indications of motives be avoided. This will remove one spring of error and false judgment from the mind of the speaker, and from the minds of the hearers one source of misunderstanding.*

In a minute analysis of the subject of motives, in another part of his works,† he showed that the system of appreciating motives as good or bad, even if their goodness or badness could be discovered, proceeded on a false idea of what motives really are. It is to *intention* with relation to acts, that merit and demerit are applicable; for motives in themselves are neither good nor bad. There is no motive that may not lead to the best or to the worst of actions. A desire to preserve his family from starving is called a praiseworthy motive, so long as it prompts a man to work honestly for his bread; but who shall say that it is a praiseworthy motive, when it directs him to the highway with a pistol? The mischievousness of his act we can clearly calculate—the mischievousness of his *intention* we may estimate, even if he has been unsuccessful in his attempt to put it in practice; but we shall in vain search for a just attribute to his motive.

The petty insinuities evolved in the course of casual disputes, for the purpose generally of obtaining a temporary intellectual victory, were occasionally the subject of Bentham's reprehension. He did not consider that this habit could be compared in point of evil with many of the other sources of untruth to be found in the practice of society; but it had its sphere of mischief, and was, consequently, worthy of exposure. He says:—

Avoid all arguments that you know to be sophistical. Think not, by shutting your own eyes against the weakness of your statements, that you have thereby shut the eyes of your

hearer. Your sophistry will but irritate, for sophistry is not only uncandid, but dishonest. It is an attempt to cheat, not the purse of another, but his senses and his judgment. His aversion to you will be awakened by your effort to shine at his expense; and his contempt will be roused for the folly that supposed it was able so to shine. In all argument be candid, for the sake of your comrade and for your own sake. The triumph of an argument which is known and felt to be unfair and unfounded, is a wretched exhibition of perversity. If successful, it can serve no interests but those of fraud: if unsuccessful, it brings with it the consequences of blundering and detected dishonesty. Constituted as society is, with its errors and prejudices, its narrow interests and interested passions, the pursuit of truth makes demands enough upon courageous virtue; for he who goes one step beyond the line which the world's poor conventions have drawn around moral and political questions, must expect to meet with the thundering anathemas and obloquies of all who wish to stand well with the arbiters of opinion. Let no searcher after truth be led into the labyrinths of sophistry. He will have enough to do in order to make good his ground one step beyond that trodden by those who dogmatize about decorum, and propriety, and right and wrong.‡

In many established institutions Bentham found principles tending to the commission of falsehood, and to the designed obliteration of the distinction between the truth and a lie. Of these the most prominent were Oaths, in their two classes, Promissory and Assertory. A Promissory oath, such as an oath of allegiance, is an obligation taken not to know the truth; or, if it should be known, not to act upon it. It is generally imposed under the influence of bribery and intimidation—at the time when a man has the inducement of some benefit, such as the appointment to office—to harden his conscience against the iniquity. It binds the individual down to a certain line of conduct, however clearly his conscience, aided by experience and reflection, should afterwards be opened to the evil of the course. To some it is a drag, preventing them from doing what is right; for they feel that they have already registered a vow in heaven to do what is wrong. To others it is a ready excuse for the wrong they are inclined to: they have sworn to do it, and it is useless to tell them it is not

* Deontology, vol. ii. p. 155-156.

† Principles of Morals and Legislation, in vol. i.

‡ Deontology, vol. ii. p. 145-146.

right. George III. laid the responsibility of the American war, and of his resistance to the Catholic claims, on his Coronation oath: he had sworn to preserve his dominions entire: he had sworn to preserve the Church. He was the interpreter of the meaning of these oaths, and the two questions were removed from the operation of the inquiry—what is right and what wrong? The claims of mercy and justice might cry aloud,—hundreds of thousands of his own subjects might suffer the frightful death that is caused by the hardships of unsuccessful war, in the vain attempt to inflict the same calamity on hundreds of thousands of unoffending foreigners—it mattered not: the cause was pre-judged, a vow had been registered in heaven, and it must be fulfilled.*

But the most pernicious of all promissory oaths are subscriptions to declarations of faith—to religious tests. They are a direct bribe to perjury—perjury which is daily committed. Whether, having serious differences of opinion on the subject, the candidate for office deliberately sets his hand to that which he disbelieves, or, purposely closing his eyes to the genuine meaning of the words, he, at the same time, shuts his ears to the voice of conscience, by carelessly signing as a “matter of course,” the effect is equally pernicious in poisoning the stream of public morality—poisoning it at its very fountain, the institutions where learning, and morality, and religion are promulgated—poisoning it through the very hands of those who are under the most sacred of *real* obligations to keep it pure and uncontaminated. Bentham could never refer, without the most lively indignation, to that most flagitious of shapes in which this vice is practised, when the adherence to a certain array of complex doctrines is extracted from youth, purposely and avowedly before they are capable of comprehending them; the thing which is done when they are required, before they know the doctrines of the Church of England, to declare what side they will take after

they do know them. With the same unconsciousness with which other youths have acted, and will act, he signed his adherence to the Thirty-nine Articles on entering himself at Oxford; and the act was one to which he could not refer down to the last days of his life without a feeling of bitter remorse.†

The evil effects of assertory or judicial oaths he did not find so flagrant. He held that some formality was necessary as a sanction for truth—necessary to this extent, that the witness might, by its use, be put upon his guard that he shall be made judicially responsible if he tell a falsehood. But the effect of making this ceremony a sacred invocation he maintained to be, that the criminality of falsehood was removed to the wrong place. Instead of being centered in the mischief occasioned by the lie, it was attached to the profanation of the ceremony. Thus, judicial falsehood, instead of being like theft or forgery, a crime between man and man, was converted into an offence against God. Hence it resulted, that the real ingredient in the offence was lost sight of, and that men believed that if they could stand right on the subject of the profanation, the injury committed was no wrong. Multitudinous are the devices that were fallen upon to evade the oath; for wherever a man could persuade himself that he was not pledged to the Deity, (and in many a case the conclusion has been easily come to) he was free; for neither law nor morality said it was a crime to accomplish any object by a testimonial fraud, if it were not accompanied by a false oath.‡ The danger of the fallacy is in this, that, as the sanction for truth is hidden with his other religious opinions in the breast of the witness, no one can tell whether it is in operation or not. It is a simple doctrine, the practical application of which can be easily calculated on, that if a witness, by the nature of his evidence,

† See Works, vol. x. p. 37.

‡ In the trial of an election petition some years ago, it came out in evidence, that young lads put pieces of paper, with the number 21 marked on them, in their shoes, that they might be able to swear they were “above twenty-one.”

* See Works, vol. ii. p. 403 *et seq.*; v. 207, 514 *et seq.*

leads twelve men to convict another of murder unjustly, he is himself guilty of murder: but you must have found your way to the bottom of his soul, and must know his whole system of religion, before you are assured that he holds any given ceremony a sacred obligation made between the Deity and himself.*

The oath applied to jurymen in England, was one which Bentham held as *sui generis* in its absurdity and self-contradiction. Twelve men are compelled solemnly to swear that they will come to a decision according to their conscience, and they are then starved till they declare themselves all of one mind.†

Since the earlier works of Bentham against oaths were published, Legislation has made rapid strides in the abolition both of the promissory and assertory class.‡

Bentham considered the support and perpetuation of Foundations, or Institutions for the inculcation of particular doctrines, to be most dangerous to the cause of truth;§ and he likened them to funds for paying judges to decide, not according to justice, but in favour of a specified class of clients. So long as the system shall continue, of keeping foundations "sacred," as it is called, from the interference of the legislature acting upon them for the common good, they become so many centres of absolutism in the midst of free institutions—of absolutism, where there is not even that chance of improvement which may be afforded in the probability of occasional good men appearing in a succession of despots; for the despots who have thus transmitted their will to future ages, are gone, and neither hope

nor fear—neither reason, nor the treasures of experience, can operate upon them to make them revoke their laws. Thus, every man who is possessed of wealth, by judiciously founding with it some institution properly calculated to the end in view, may place a perpetual barrier in the way of free inquiry, and tie down a portion of posterity to the amount of knowledge and the class of opinions possessed by the men of his own generation.|| In public national matters, legislation in some measure adapts the increased facilities to the enlarged wants of the age; systems of management make some approach to the improved habits of the time; official salaries are brought to something like a proportion, according to the state of the labour-market, with the work performed for them. But centuries pass, with their train of changes and improvements, and leave the foundation unaltered and unalterable. The legislature dare not pry into its operations, or ask what its officials are paid, or what they do; while the daily routine of the establishment, and the very costume of its inmates, proclaim it at war with improvement—a cluster of human beings, at whose gate the march of civilisation and enlightenment is arrested. The whole principle of the sacredness of foundations proceeds on a false analogy with the stability of property. Because it is good for all members of society, that a man should keep, and use for all lawful purposes while he lives, and should give to whom he pleases at his death, that which he has made, or which he is otherwise allowed to call his own,—it does not follow that it is good for the

* See "Swear not at all." Also, Works, vol. v. p. 454 *et seq.*; vi. 318 *et seq.*

† See Works, vol. v. p. 84 *et seq.*

‡ See Editor's note to Works, vol. v. p. 188.

§ Establishments for the support and influence of a dominant sect in a civilized country, are not to be confounded with funds for appointing propagandist missions to barbarous countries, or to the destitute or uncivilized portion of a community. The former have a tendency to stop inquiry, and keep back the community in the pursuit of truth; the latter have for their object the raising less intelligent classes to the standard which has been

already reached by the more civilized. Apart from questions as to the superiority of one sect of Christians over another, the religious opinions of civilized Europe cannot well be propagated in barbarous Africa, without conveying some portions of whatever, in the character of the people of Europe, is superior to that of the people of Africa. But it by no means follows, that, in the same civilized society, good will be done by giving one sect power and money to bear down another. The subject of Christian missions was not investigated in any of Bentham's published works.

|| See Works, vol. ix. pp. 35, 303.

community that he should be allowed to employ it in building a barrier to stop the stream of civilisation and improvement, and to keep a certain class of his fellow-men just as enlightened on a certain set of doctrines as he is himself, and no more so. The sinister interests which support the permanence and inviolability of such institutions, are founded in the wealth they give to individuals and the power of domination they confer on classes of thinkers. When they are overwhelmed by any great revolution of opinion—such as the Reformation—those portions of them which escape individual rapacity are seized upon by the strongest sect, appropriated by them to the promulgation of doctrines the reverse of those for which the property was originally destined, and are then surrounded by the same impregnable walls of sacredness and immutability, as if they were still held in terms of the original founder's destination, and had never been wrenched from the hands of those for whom he intended them.

The "Fictions of Law," of which the English practice is so full, were repeatedly and earnestly attacked by Bentham, both collectively and in detail. The example shown to the world, of falsehoods deliberately, and on a fixed system, told in the very workshops of justice, and by those who are employed to support truth and honesty, he looked upon as holding out a pernicious example to the public. Without any sarcastic or reprehensory qualification, a fiction of law may be defined in general as the saying something exists which does not exist, and acting as if it existed; or *vice versa*. Thus, by the system of pleading anterior to the late Uniformity Act, the defendant over whom the Court of King's Bench extended its jurisdiction, was said in the writ to have been in the custody of the Marshal of the King's Bench Prison for an offence, though no such circumstance had taken place. The court had originally no jurisdiction over any one who was not so in custody; the lie was told that the court might have an excuse for interfering; the court would not allow the lie to be contradicted, and it assum-

ed jurisdiction accordingly. The origin of this class of fictions was of the most sordid character—the judges and other officers of court being paid by fees, a trade competition for jurisdictions took place; each court trying to offer better terms to litigants, than the others, and adopting the fictions as a means of accomplishing this object. Of another class are the Fictions as to Common Bail, Fines and Recoveries, Docketing Entails, &c. Where the object to be accomplished by the fiction is a right one, it should have been accomplished directly, and without falsehood or ambiguity, by the Legislature; where the end is a wrong one, it should not have been accomplished at all. But whether used to a good or a bad purpose, it is an assumption of arbitrary power. "A fiction of law may be defined a wilful falsehood, having for its object the stealing legislative power, by and for hands which durst not, or could not, openly claim it; and, but for the delusion thus produced, could not exercise it."*

It is true that new fictions are not now invented—at least on any considerable scale; and that those formerly created have become a fixed part of the law, and are uniform in their operation. It is still the case, however, that from the nominal repetition of the fraud under which they were originally perpetrated, they are a cumbrous and costly method of transacting judicial business. But they have a much worse influence than this. By the obscurity and complexity with which they surround operations which might be simple and open, they afford concealment to fraud and professional chicanery; they exclude the unprofessional man from the means of knowing what the lawyer is doing among the windings of the professional labyrinth, and they show him that the law countenances palpable falsehoods. "When an action, for example, is brought against a man, how do you think they contrive to give him notice to defend himself? Sometimes he is told that he is in jail; sometimes that he is lurking up and down the country, in company with a

* Works, vol. i. p. 243.

vagabond of the name of Doe; though all the while he is sitting quietly by his own fireside: and this my Lord Chief Justice sets his hand to. At other times, they write to a man who lives in Cumberland or Cornwall, and tell him that if he does not appear in Westminster Hall on a certain day he forfeits an hundred pounds. When he comes, so far from having anything to say to him, they won't hear him: for all they want him for, is to grease their fingers."*

A class of chronic falsehoods had found their way into the minds of political thinkers, which Bentham, in imitation of the logicians, termed Fallacies.† Of these he undertook a laborious and minute investigation and exposure; and there were none of his extensive labours to which he looked with more satisfaction than this rooting out, from the field of political thought, of the tares which the enemies of truth had sown in it. He found that they consisted, to a great extent, in an ingenious perversion of the language of praise or blame, to make it comprehend that which did not properly come within the quality expressed: and the permanent evil to truth he found to consist in the circumstance, that by habitual use and reiteration, men came to associate the good or bad quality with the thing so spoken of, without examining it. Thus the term "old," which, as applied to men, implies the probability of superior experience and sedateness, he found used in characterizing early times, or those states of society which had not the benefit of so long a lesson of experience as later times have had.

It is singular that the persons who are most loud in magnifying the pretended advantage in point of wisdom of ancient over modern times, are the very same who are the most loud in proclaiming the superiority in the same respect of old men above young ones. What has governed them in both cases seems to have been the prejudice of names: it is certain that, if there be some reasons why the old should have advantage over the young, there are at least the same reasons for times that

are called modern having it over times that are called ancient. There are more: for decrepitude as applied to persons is real: as applied to times it is imaginary. Men, as they acquire experience, lose the faculties that might enable them to turn it to account: it is not so with times: the stock of wisdom acquired by ages is a stock transmitted through a vast number of generations, from men in the perfection of their faculties to others also in the perfection of their faculties: the stock of knowledge transmitted from one period of a man's life to another period of the same man's life, is a stock from which, after a certain period, large defalcations are every minute making by the scythe of Time.‡

That the end justifies the means, is another of these fallacies. He held that both the end and the means should be weighed in the balance of good and evil. When, taken together, they afford a balance of good, then are both transactions justified; but, if more mischief be done by the means than the good produced by the end, no abstract amount of goodness can justify that end being followed.§ As a familiar example: if a man is drowning, the rescuing him is a good end in itself; but, if the method of rescuing him should involve the sacrifice of two other lives, the balance of the whole act is evil, and the end does not justify the means. "Argue not from the abuse of a thing against its use," is another fallacy. The liability to be abused is a quality which must detract from the value of anything that can be made use of. Between two institutions, equal in value in other respects, that which has preservatives against the means of turning it to abuse, is better than that which has none. Indeed, it is in the preservatives against abuse, that whatever is valuable in political institutions has its value. The sacrifices to this principle are enormous in a constitutional country. When the business could be transacted in the Government office at a hundredth part of the expence, and in, perhaps, a fiftieth part of the time, who would have it managed in Parliament, were it not for the protection afforded by the representative system against abuse? If we

* Works, vol. v. p. 234. See generally on Fictions of Law, vol. i. p. 243; v. 13; vi. 100; vii. 283 *et seq.*; 415 *et seq.*; ix. 77 *et seq.*

† See the Book of Fallacies, vol. ii. p. 375 *et seq.*

‡ Works, vol. x. p. 69.

§ Ibid. vol. ii. p. 470.

were bound to put the abuses out of view, despotism would be found to be the best form of government.

Fallacies lurk in abundance under imputations and laudatory personalities. They are to be found, also, in certain fixed party expressions: such as "Order," "Establishment," "Matchless Constitution," "Balance of Power," "Glorious Revolution." Fallacies of no small influence on society, pervade the employment of words designative of principles, as a means of indicating individuals; as where the opponents of a dominant party are called the enemies of government; and those who find fault with the doings of lawyers, are said to be in opposition to the law; terms used when there is a wish to class those they are levelled at as enemies to the preservation of property, or to the enforcement of justice. With a like object are those who attack churchmen and priestcraft called the enemies of the church, and, by inference, the enemies of religion.*

The Book of Fallacies is chiefly directed against the devices made use of on the side of corruption or arbitrary power. In a separate tract, called *Anarchical Fallacies*,† there is an exposition of the false logic with which demagogues, and other enemies of well-ordered society, vindicate their misdeeds. His *Text-Book*, on this occasion, was "the declaration of the rights of man and the citizen, decreed by the Constituent Assembly in France;" and it was while the philosopher, in his retirement, was expounding the sanguinary and anti-social reasoning of this production, that the wildest flames of the Revolution burst forth, and confirmed his prophecies ere the ink had dried on the page. In the storm of that eventful period, the small still voice of one weighing the meanings of words used, and drawing the practical

inference of vague generalities, was not heeded. It is true that this was but a criticism on the meaning of words; and the time was not one for theorising but for acting. Words, however, are the expression of opinions, and opinions are the source of acts. The same opinions may again gain ground more or less, and be expressed in like words, and amenable to the same criticism; and if to the mere lover of narrative, or the partisan politician raking out from the embers of the Revolution materials for modern controversy, the philosopher's logical comment will have little interest, it will weigh much with those who have the peace and wellbeing of society really at heart. "In a play or a novel, an improper word is but a word: and the impropriety, whether noticed or not, is attended with no consequences. In a body of laws—especially of laws given as constitutional and fundamental ones—an improper word would be a national calamity: and civil war may be the consequence of it. Out of one foolish word may start a thousand daggers."‡ One of the expressions attacked in connexion with anarchical fallacies has already been noticed, in reference to Bentham's abandonment of technical terms which had been vitiated by their bad use—(see p. 14.)

Bentham considered that the Legislature, in dealing with the subject of Evidence, had in its power the means of creating and applying to practical use a store of facts, covering the whole field of human action, and forming an experimental foundation, by which every description of operation, from the proceedings of the Legislature and the judicial tribunals, to the acts of the private citizen, might be beneficially regulated. As the great means of separating what is true from what is false he thought the code of judicial evidence should proceed on the most searching examination of principles, and should be most cautiously and scientifically organized. To an examination of the principles on which that code should be based, and of the aberrations of the existing law, he de-

* See Works, vol. ii. p. 448; ix. 76. The references made above on the subject of fallacies are casual and unmethodical. A mere analytical view of the fallacies exposed by Bentham, would not be satisfactory, without embodying the exposure itself; and to accomplish that task more briefly than he has himself done it, would be a vain attempt.

† Works, vol. ii. p. 489 *et seq.*

‡ Works, vol. ii. p. 497.

voted two of the volumes now before the public;* and there is, perhaps, scarcely any other of his expositions which has been so generally adopted by all who have examined it, or which the Legislature has so decidedly (though certainly very cautiously) shown itself disposed to admit into the law of the land. The subject is divided into two great heads. The first is that which is ordinarily called Evidence—the succession of facts, from the consideration of which a belief is come to on one side or other of a statement; as in the case of a civil or criminal trial, when, from the testimony of witnesses, the conduct of persons, or the position of things, a decision is come to by those who are appointed to judge. This is called Unpreappointed evidence, because the dispute arises out of the very fact that arrangements have not been, or could not have been, made sufficient to obviate it; and the circumstances out of which the truth is finally reached were not prearranged for the purpose of exhibiting it. The other species of Evidence is called Preappointed, and consists, in general, of what are commonly called Records: authenticated statements of facts, such as are conveyed in recorded contracts, registers of births marriages and deaths, &c., reduced into a state of evidence to be applied to subsequent use, whether at the instance of the legal tribunals, or of the legislators or others, who may wish to make the facts so proved the foundation of their public or private acts.

Bringing his ruling principle to bear on the first of these great classes, he found that no species of evidence should be hidden from those who had to judge in a disputed question, unless it could be made to appear that more mischief would be done by the admission than by the exclusion. The law, instead of weighing the matter by this simple rule, has given effect to barbarous usages and prejudices, and to feelings of antipathy and vengeance. The ceremony of an oath was invented as an ordeal, at the same time with trial by

battel and the ordeal of the hot ploughshares; and it so far held sway when Bentham wrote his *Rationale of Evidence*, that there was no exemption in criminal cases: and if a witness, from conscientious motives, or obstinacy, or evil design, refused to swear, a curtain was drawn before the light which his evidence might throw on the charge, and the accused was let loose on society, or unjustly punished, according to the side on which the deficiency might act. When large bodies of men arose with conscientious objections to oaths, the principle underwent a practical *reductio ad absurdum*, and society ran the risk of being dissolved; for there were thousands upon thousands of men with broad-brimmed hats, whose presence, when crimes were committed, exempted the perpetrators from punishment,—and so the Legislature had to give way successively in the case of the Quakers, the Moravians, and the Separatists. On a kindred ground, a witness was rejected on account of his religious creed; and justice was injured that he might be punished by the reproach thrown upon him. A man being asked in the witness box if he believes in a God, and a future state of rewards and punishments, and answering “no,” is immediately rejected; his candour in admitting so very unpopular a fact, being a foundation for the inference that he cannot be depended on for speaking the truth. If he tell a falsehood, beginning his evidence by a deliberate statement of a belief in that which he does not believe, he is held an unexceptionable witness.

Another of the principles of exclusion attacked in the *Rationale of Evidence* is that which is founded on *interest*. It is admitted that preponderant interest in favour of falsehood may sway the testimony of a witness; but the question comes to be, who shall predicate of the extent to which it will sway him or whether it will sway him at all? Shall those be the judges in this matter who have the living and speaking man before them, with a statement of the circumstance liable to sway him, the power of cross-questioning him, and the means of punishing him for falsehood

* Works, vols. vi. and vii.

or prevarication? or shall the matter be prejudged by those who have never seen him, but who know human nature so much better than the judge and jury who *are* to see him, that they can predict precisely whether he is going to tell the truth or a lie? English practice has decided in favour of the latter alternative, and has declared that the evidence of a witness who has an interest in the question at issue must be rejected.

But the limitation of the exclusion is itself a proof of its absurdity. Interest may grow out of the whole range of human passions and feelings. Revenge, Hatred, Love, Affection, Party Spirit, may all bear strongly on the human mind, and prepare it for any description of iniquity. In vain, however, could the law attempt to measure these sources of interest, or fix a general criterion for ascertaining their existence. One species of interest only could it measure—the pecuniary; and therefore it narrowed the operation of exclusion to that ground. It thus happens that, according to the principles of English law, Damon and Pythias would not be presumed to have any such community of feeling as would endanger the strictest impartiality if one were called on to testify against the other; while, on the other hand, if Aristides could gain a farthing by swearing away an innocent man's life, he would so undoubtedly perjure himself for the sake of the farthing, that he need not be listened to.

In favour of truth there are a multitude of tutelary motives, acting independently of the operation of the law in punishing mendacity. Indolence alone is a motive in favour of truth: to support a lie through a circumstantial history, under a battery of cross-questions, is a difficult task which a man will not enter on for nothing. Religion, morality, the respect of the world, are all in favour of truth; and why should it be presumed that the slightest—the very slightest—pecuniary interest will at once break down all these barriers? In reality there are many cases in which the inferiority of the pecuniary to some other interest is exhibited in the nature of a witness's con-

duct, without legally disqualifying him. It is so where he pursues the ends of justice from a feeling of resentment, and incurs expense to gratify it. If he had that interest in the conviction which is expressed by the money he has spent to procure it, he would be disqualified; but the existence of an interest so incontrovertibly proved to be stronger does not affect him.

Another improper ground for excluding a witness is his being a criminal—a ground much narrowed by the later practice of all parts of the empire. It is where the crime imputed is that of perjury, that it founds the greatest doubt of the probable veracity of the witness; and on this ground Bentham meets it. A man has assuredly told one falsehood—does it necessarily follow that he will tell another? If the truth could be had without appealing to him, it might be well not to run the risk; but the case supposes the impracticability of getting at the truth without hearing him,—for that which makes a man a witness is the necessity of having his statement to make up a full view of the facts. Is, then, the certain deception arising from defective evidence, to be incurred in preference to the risk of deception from his telling a falsehood—a risk indefinitely reduced by the chance that his falsehood, if uttered, will be disbelieved, and that his character will make his evidence be scrutinizingly examined? The law in this case stultifies itself by a counter-exclusion limiting the means by which the perjury can be proved. This must be by production of the record of conviction, and no otherwise: and if this record is kept out of the way, though there may be a thousand persons (the judge included) ready to testify that the witness was convicted of perjury, his testimony is unexceptionable.

But the most mischievous of all the exclusions is that by which a man is privileged to decline giving testimony which may injure him. It is not that the injury may not in some cases be a justifiable protection: a merchant should not have the secrets of his trade dragged to light by any interested person who can ingeniously plant a petty liti-

gation in his vicinity. But to justify the privilege, the evil to be suffered by disclosure should be clearly predominant over the advantage of the evidence. It is in those cases where the right to this privilege is held most indisputable, that it is most pernicious in its effect—viz., where the harm which the witness may bring on himself, is punishment for an offence. The law says, that no man is bound to criminate himself; and thus, by unjust leniency founded upon a false analogy, the evidence of two crimes is purposely concealed; that of a crime which a witness may have himself committed, and that of another crime which he may have witnessed in the course of his own iniquities. If the laws which condemn a man be just laws, let them be enforced—if they be unjust, let them be amended. The various impediments which still stand in the way of the conviction of a criminal are the relics of a barbarous age, when might made right,—when one class of men made cruel laws, and others tried to protect themselves from their operation by frauds and fictions. When society was in such a state, that an innocent man was as likely to be hanged as a guilty, there was some reason on the side of those who thought that every legal quibble which saved a victim from the fangs of the law was a virtuous act: but in an age when nine-tenths of society are in favour of the pure administration of justice, those who encourage such impediments to their operation cast an imputation on the institutions of their country.*

It would seem, to those unaccustomed to its operation, to be an absurdity too perverse to have entered into the brain of man, to award a punishment for an offence, and then, on the plea of humanity, to take measures to prevent the criminal from betraying his guilt. It

* From *The Globe* of 7th December, 1842.

"Surrey Sessions, 6th December, 1842.—Charge of Stealing a Banker's Check.

"The jury, after a short deliberation, acquitted the prisoner; upon which

"The chairman, addressing him, said that he was very fortunate to have escaped conviction; for the court was in possession of a document of which there was little doubt he was the writer, and which, had it been re-

is quite true that there may be means of coming at the truth which ought to be avoided from their mischievous effects on society; but these mischievous effects can only occur in the unjust punishment of the innocent,—the just punishment of the guilty cannot be an evil. Torture is a means of coming at the truth; but the objection to it is, that the innocent as well as the guilty may suffer from the operation of the test. In the case of a man criminating himself, it is the guilty, and none other, that can be affected; and society at large gains an undoubted advantage by the proof of a crime and the consequent punishment of the delinquent. The leading principle laid down by Bentham regarding the investigation of crimes, is of the clearest and most effective character; it is simply this: adopt every measure for the exposure of the guilty, which will not involve the innocent. This principle does not admit of confidential communications by criminals to their law advisers being kept inviolate, any more than their revelations to their accomplices. Confidential communications, the object of which is to defeat the law, have no better claim to secrecy than those which have in view the commission of a crime. A change of system in this respect would probably make criminals less confidential with their agents; but it is difficult to see what harm society could suffer by an alteration which would only compromise the safety of the guilty.

The above remarks bear only on a small portion of the *Rationale of Evidence*. An analysis of the whole work, within the compass of the present notice, would be little more than a table of contents, and could give the reader no satisfaction. On a subject which occupies a considerable proportion of the work—that of Records, some remarks will be made further on. (See p. 72.)

ceived in evidence, would surely have led to a very different result from that which the trial had taken. The prisoner then bowed and left the dock."

The question naturally suggested by the perusal of this statement is, Whether the Surrey magistrates sit for the punishment of criminals, or for the purpose of conniving at their crimes by concealing the evidence?

SECTION IV.

SYSTEM OF GOVERNMENT.

To find out the best means by which mankind could be governed, was the chief object of all Bentham's exertions; and there is scarcely a work which he has written in which he has not some allusion to this subject. His expositions in reference to politics are divided into two distinct classes. In the one he lays down those principles and rules of action which ought to guide a people, supposed to have thrown off all trammels of prejudice and established custom, and to be in search of the very best form of government which a practical philosopher would dictate to persons ready implicitly to adopt his arrangements. In the other class of cases, in which he had immediate practical ends in view, his endeavour was to mould the existing machinery of established institutions and opinions to the production of the best practical results. The reader, therefore, must not take it for granted that the principles and institutions which are developed in the former class of works, are such as their Author would recommend a practical statesman, connected with an established government, to put into immediate operation, however much he might wish to establish in the statesman's mind a leaning to such opinions as an ultimate end of gradual change. There are projects of practical reform in the minor works of Bentham, adapted to all grades of government, from democratic republicanism in the United States,* to Mahomedan despotism in Tripoli.† It will not be expected that any development should be here attempted of the different projects of reform which he thus applied to such distinct circumstances; but some explanation of the more conspicuous features of his opinions on government will be attempted.

He held that the ruling power should be in the hands of the people, because

the happiness of the people being the object of government, the means of obtaining that object would thus be in the power of those who have the chief interest in realizing it. The happiness of every individual in the community would be best secured by giving every individual the species of government he would like best. But as confliction of interests renders this impossible, the nearest approach to such universal freedom of choice is, to put the power into the hands of the majority, whose use of it will not only be that which is most conducive to their own liking, but will likewise be such as cannot be very detrimental to a minority, which, in the case of such perfect freedom, must have too many interests in common with the majority to be in any case much injured by those proceedings which may appear to the latter the most fitting. But all the people of a state large enough to enjoy a separate government profitably, cannot collectively transact the business of government; and therefore it is necessary that some artificial arrangement should be adopted, by which the closest practicable approach may be made towards acting in accordance with their opinions: hence comes the Representative system.

Bentham was of opinion that no male adult should be excluded from voting for a representative, except those who are unable to read. His criterion of a right to the franchise was therefore equivalent to that which Mr Adam has aptly called the Knowledge qualification. Bentham termed it "virtually universal suffrage," because it excluded no one who chose to take the trouble of learning to read; and it might fairly be estimated that those who refused to make this exertion were as unfit to exercise the right to advantage, as they were careless of its possession.‡ There were other persons

* See Works, vol. iv. p. 451 *et seq.*

† Ibid. vol. viii. p. 555 *et seq.*

‡ See Works, vol. iii. pp. 464, 470, 560, 565.—

"Now as to the qualification by reading—At

besides "non-readers" who might be excluded, were it not for the complexity that would be so created—*e. g.* people of unsound intellect, and criminals. Their influence, however, would be almost imperceptible—they would not exist in any one place in sufficient numbers to be made serviceable tools of; and their votes, presuming them to be given without thought, or with a bad intention, would be likely to tell on either side of a contest with tolerably equal effect. Arrangements for excluding them would be complex and uncertain; whereas the criterion of ability to read is easily adjusted on a simple practicable arrangement, which is described in the Draft of a Reform Bill.* He was of opinion that the questions whether females should be admitted to the franchise, and how the political privileges they ought to hold should be bounded, could not be satisfactorily discussed while prejudices on the subject are so strong as they were when he wrote.†

Another of the essentials of representative government, is Secrecy in Suffrage—the system of the Ballot. The reasons will be briefly explained further on in connexion with the principle of responsibility. In the Draft of a Reform Bill, arrangements are made for conducting an election on the Ballot system, well worthy of the attention of practical reformers. The operation is to pro-

ceed on a raised platform in presence of the public and of certain officials, who all see that the elector votes for some one, without knowing for whom. In a glass-covered counter, cards are deposited bearing each the name of a candidate, a separate compartment being provided for the cards of each candidate. These cards have each a joint or hinge in the middle, admitting of their being folded double, with the name inside. At the moment of voting, no one sees these cards but the voter, who takes one of them up folded, and holding it between his finger and thumb in the presence of the public, hands it to an official, who, without seeing the name within, files it in the presence of the public.‡ It is a necessary preliminary of such a system, that all questions as to the right of voting are prejudged, and that no scrutiny can supervene.

Annual Parliaments, and equality of Election Districts, are further arrangements of the representative system, the reasons for which are also noticed in connexion with responsibility. To obviate the inconvenience apt to be created by the annual separation of the legislature, a plan is devised for the appointment of a "Continuation committee," to keep on through a succeeding session the thread of the legislation commenced in a preceding;§ an arrangement which, in conjunction with others for keeping

Qualification by reading involves no exclusion: for every man who chose could give it to himself. He could do so, before a bill such as this could go through the forms, even supposing Honourable House ever so well disposed to it."—P. 560.

* Works, vol. iii. p. 565.

† See Works, vol. ix. pp. 3, 108. Perhaps the following would be the just utilitarian method of treating this question. At the present moment there is, perhaps, not above one female in a hundred who wishes to possess the franchise. The extension of it to the sex would be a sacrifice of the peace and happiness of the ninety-nine to the ambition of the one, and even the agitation of the question would be a modified annoyance to the former. It will perhaps be time for seriously considering the question, when the majority of the sex show an inclination to have a voice in Parliamentary Politics.

‡ See Works, vol. iii. p. 571.

§ Works, vol. ix. p. 170.

¶ See Works, vol. iii. p. 571.

§ Works, vol. ix. p. 170.

projects of law once brought before the legislature from dropping out of notice, would prevent the public time from being unprofitably wasted, by being devoted, as that of the British Parliament frequently is, to the furtherance of measures which are afterwards lost sight of.

The arrangements for the strict attendance of the members of the legislature, and for economically adjusting the time at their disposal to their duties, form the subject of many stringent provisions in the Constitutional Code.* It is provided that the executive ministers of the state shall be present *ex officio*, in order that they may be questioned, may afford instruction and explanation, and may even originate measures and join in the debate—but they are not to have the privilege of voting.† That the superior experience and knowledge which the judges must possess, of the state of the law, and of the amendments from from time to time necessary to improve it, may be applied to practical use, an official communication with the legislature is kept constantly open to them; and to prevent their suggestions from being neglected, provision is made for these being incorporated in the body of the law, if the legislature, after the proper formal intimations, do not interpose a veto.‡

In the British Parliament much of the time that should be devoted to the general legislation of the country is wasted on local and private projects. Of these there are some that should be appropriated to the Courts of Law—others should be managed by Local Legisla-

tures. § The arrangements of such local legislatures, in subordination to the supreme body, are provided for in the Constitutional Code. ||

A hereditary legislative body is an institution utterly at variance with the first principles of that republican system, which Bentham considered to be the best form of Government in the abstract—the best form that could be adopted, if circumstances should give an unlimited variety of choice. But he was decidedly of opinion, that any second chamber, whether elective or hereditary, can operate to no good. It occasions delay. It makes rivalry and conflicts between house and house, which tend to the public detriment. It prevents decisions from coming clearly out, as between majority and minority, very often making a small minority of the collective members of the Legislature triumphant over a majority. The practical result of such a system, in the end, generally is, that the one house becomes the originating and working, and truly legislating body, while the other, finding itself incapable for good, has nothing to boast of but its capacity for mischief; the extent of which is the more palpably shown the more useful are the measures it resists. The services presumed to be performed by a second legislative body, in the shape of inquiry, and the deliberate and accurate inspection of measures before they are sanctioned, are all capable of being adapted to the legislation of a single chamber, through the instrumentality of committees.¶

* Works, vol. ix. p. 163-170.

† Ibid. p. 316. ‡ Ibid. pp. 431, 504-508.

§ “Of cases in which, for want of due discrimination between the duties peculiar to itself, and those not peculiar to itself, the Supreme Legislature stands exposed to the danger of wasteful application of its time, examples are the following :—

“Inquiry and decision as to a case in which property belonging to an individual is required to be transferred to Government, for some supposed preponderantly beneficial national purpose : and thence as to the quality and quantity of the compensation due. In this case the appropriate authority would be, not the Supreme Legislative, but the Judicial.

“Taxation, for the expense of works, the

benefit of which is confined within the limits of particular portions of territory : say of peculiar districts. In this case a more apt authority would be, that of the sub-legislature of the district.

“So, if for any local purpose, common to some district.

“So, a transfer for a merely private purpose : the arrangement being clearly conducive to the mutual benefit of all parties ; and the transfer capable of being made without detriment to the general sense of security and respect of property. Here the appropriate authority would be the judicial authority of the district.”—Works, vol. ix. p. 118.

|| Works, vol. ix. p. 640 *et seq.*

¶ See Letter to Fellow Citizens of France

In considering the proper arrangements for the conduct of business by a supreme legislature, it was found, that very little improvement could be made on the practice of Parliament; which, in Bentham's opinion, made the nearest approach to abstract perfection, which has been exhibited by any human institution. To those who are accustomed to expect in his works nothing but censure of existing institutions, the chapter, "on the mode of proceeding in a Political Assembly in the formation of its decisions," in the *Essay on Political Tactics*,* will be a remarkable exception. The chief elements of this excellence were found in the perfection of the machinery for preventing anything from going forth as a vote of the body, which had not been verbatim subjected to the inspection of its members; the arrangements, which rendered it impossible that a subject of debate could drop without being disposed of in some shape or other; the accurate line of distinction between debating and voting; and that scientifically arranged system for considering propositions in conjunction with their amendments, which admits of a vote being separately taken, upon every modification of a proposition which may happen to be before the house. He was of opinion, that the preservation of the liberties of the country was, in a great measure, owing to a firm adherence to the forms of Parliamentary tactics; and he attributed the contrast which they afforded, with the tedious, complex, and perverse forms of judicial practice in England, to the circumstance, that while the legislature had the distinct and rapid despatch of business honestly at heart, the proceedings in the Courts of Law were tortured and twisted to suit the sinister ends of the various parties—the suitors, the lawyers, the witnesses, and even the judges themselves. The work on *Political Tactics* was written with the design of doing a service to the National

Assembly of France;† but, in that mob-arena, its rational views, and the practical application of them, were alike unheeded.

This loose sketch of the leading principles of the system of government, developed by Bentham in his *Constitutional Code* and other works, would be incomplete without the statement, that, according to his plan, the head of the government is the Prime Minister, chosen by the Legislature.‡ Of the methods by which checks are kept upon the power of this official; of his relation to the heads of departments, and the machinery by which their duties and powers are limited and connected with each other, it would be impossible to give anything like a satisfactory view in this sketch; and reference must be made to the substance of the *Code*.

An important feature in all the political writings of Bentham, consists in elucidations of the means by which men intrusted with power may be prevented from abusing it to the public prejudice. Considering all the transactions of the Political authorities, including the administration of the law, as subject to two checks—the direction of superordinate political authorities, and the control of public opinion—he searched for the best means of enforcing these securities, and found it in the principle of individual responsibility. To this end, he desired that every judicial or administrative act should be so done, that it might be seen by whom it was done, and under what circumstances. With this view he preferred individual management to board management. Where there are several persons concerned in giving effect to an operation, responsibility rests with no individual, and cannot be accurately partitioned among all. The relief from responsibility releasing each individual from the anxiety to do right, renders the appropriate industry and skill unnecessary. If one head and one pair of hands can transact the business, it will not be better done if half-a-dozen heads and a dozen pair of hands of the same skill and

on Houses of Peers and Senates. Works, vol. iv. p. 419. See also, ii. 307 *et seq.*; ix. 114 *et seq.*

* Vol. ii. p. 330 *et seq.*

† See Works, vol. ii. p. 299.

‡ Works, vol. ix. p. 208.

ability join in it. If one person cannot do the whole, or if a man be found eminently skilful in respect to one part of the transaction, and unskilful as to others, let the operation be divided accordingly; keeping, this in view, that whatever a man is expected to do, or does, it be known and seen whether he does it, and how. On the same principle, there are objections to the administration of justice by more than one judge at a time; and in this case there is the additional argument, that a difference of opinion known to exist among judges of equal rank, power, and means of information, unsettles the law, and encourages litigation.*

But the principle of individual action does not extend to the legislature. The object in this case is, not the transaction of the official business of the country, but the direction and the control of its transaction, for the benefit of the people by whom the legislature is constituted. It might be practicable to take the votes of the whole people for one ruler to be elected by the majority; but besides many other risks and inconveniences attending on it, such a system would leave totally unrepresented some class of political thinkers, which might be nearly as large as that by which the ruler was elected. The greater the number of representatives, the greater will be the number of persons represented, and the nearer will be the approach made to that point of abstract perfection, which would result in everybody being represented. At the amount, however, beyond which legislative business cannot be easily or advantageously transacted, the number of legislators must be limited; and thus the problem of representation cannot be worked out without a certain number remaining unrepresented. But though there is a necessitated community of action in a legislature, individuality of responsibility may be preserved—preserved in the proper quarter—between representatives and represented. It is held that the representative should, so long as he is in that position, be actually, so far as is practicable,

the person which his designation announces him to be—the representative of the opinions of those who have chosen him. It is not possible that, on every question which may come before the legislature, his own opinion will be precisely that of the majority who voted for him. It is not, as a point of morality, recommended to him to adopt measures which his conscience repels, because his constituents approve of them. But it is his duty, if such a difference of opinion arise between him and his constituents, that, had it been anticipated before the election, he would not have been elected by them, to resign his seat. On the representative committing such an act of self-sacrifice, however, no dependence is placed; and a system of arrangements is expounded in the Constitutional Code, and the Election Code or Reform Bill, calculated to have the effect of removing, with the least practicable inconvenience and delay, any representative whose opinion is at variance with that of the majority of his constituents. The most important and comprehensive of these arrangements is the annual election of representatives; by which, not only is the period during which a representative can be acting at variance with his constituents reduced to a comparatively short one, but a periodical intercommunication has place between electors and elected, conducive to the interchange of information regarding each other's sentiments.†

The principle of personal responsibility, carried through all other departments of the state, ceases with the constitutive or the elective constituency—the source of all political power. The interest of the individuals constituting the greatest number of the people is, that the government should be conducted favourably to the interests of that greatest number. Thus the general interest is each man's personal interest. When any one is transacting that in which his personal interest alone is at stake, he need be responsible to no other person;

* See Works, vol. iii. p. 571 note; iv. 125; v. 17; vi. 557.

† See Works, vol. iii. pp. 512 *et seq.*, 588, 600; ix. 191.

and the interference of another will be more likely to lead him astray than to put him right. The elector, if uninfluenced, gaining nothing by his choice but his share in the results of good government to all, votes accordingly for the man who, as a legislator, will act to that end. But if his vote for a person who will *not* act, as a legislator, for the general good, be made more valuable to him than his chance of a share in the results of good government, he will, in the general case, vote in compliance with that stronger interest. Hence the operation of bribery and intimidation at elections. Secrecy of suffrage, or as it is commonly termed the ballot, is the remedy held out for this disease. As the candidate cannot know whether or not the service has been performed, it is held that he will not give the wages. It is held that, since there is no means of detecting the nonfulfilment of his bargain, the bribed elector is in the same position, as to interests, with the unbribed—*i. e.*, his interest is identical with that of the

public at large, and in favour of good government; and that the candidate, knowing this to be the case, will not throw away his money.*

But it is essential to the efficacy of this arrangement, as well as to the securing the majority in the legislature to the actual majority of the voters, that the electoral districts should be equal. Where one voter, by reason of his being in a small constituency, has as great a voice in the choice of a representative as ten have in a large constituency, then there is the temptation to bring against each elector in that small body ten times the amount of corruptive influence that will be brought against each constituent in the larger, or to single the former out for a concentrated attack. Thus, even were secrecy of suffrage conceded, without equalization of election districts, so great might be the corruptive power brought to bear against the small constituencies, that all practical barriers in favour of secrecy might be broken through.†

SECTION IV.

LAW REFORM.

THE promulgation of the Laws is a prominent subject in a great proportion of Bentham's works. He held, that a rule of action which the person whom it was to affect could not make himself acquainted with the purport of, was worse than no rule—a despotic arrangement for enabling one man to be cruel to another—a project for catching people in traps, for the advantage, or it might be the amusement, of those who set them. Speaking of the common law of England, he says, "Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it, and then you beat him for it."‡ The defects which the English system exhibits in this respect, have had their origin in

the neglect of the utilitarian principle—the neglect, in the preparation and execution of the law, of the very object for which those who make it would admit that it should be made—the good of the community. The ultimate object, for instance, of the criminal law, is to do good to mankind by the prevention of crimes. The immediate object is the punishment of individuals committing crime. In the discharge of this latter object, the former and ultimate one has been frequently forgotten. A man commits a breach of the law—he is punished, and all concerned consider they have done their duty, and trouble themselves no further. The criminal says, that if he had been aware of the existence of such a law he would not have broken it; but he is answered by the old adage,

* See Works, vol. ii. p. 368; iii. 487, *et seq.*, 547.

† See Works, vol. iii. p. 569; ix. 109.

‡ *Ibid.* vol. v. p. 235.

ignoratio juris neminem excusat. Presuming him to speak the truth, is it not an immediate inference, that it would have been better had the offence never been committed at all, than that, having been committed, the perpetrator is punished?

It is a feature, too, of unknown laws, that they have to fight society by detail. When it is known to the public at large that the commission of a given act will be met by a specific punishment, they, in general, take the alarm collectively and abstain from it. They know, perhaps, that if they all break the law in a mass, they could not all be punished; but, like Fielding's mob confronting a man with a cocked pistol, no one of them is assured that he may not be the victim. But a hidden law is a poignard—none know of the presence of the deadly weapon but those who are stabbed by it, and their immediate neighbours. Such a law will often exhaust the power of its administrators before it produces any palpable effect. There are abundance of victims, but there is little proportional amendment.

There are two means by which the laws may be brought within the reach of those whom they bind. The one is by making them in themselves simple, concise, and uniform: the other by adopting adventitious means of promulgating them. In both respects there are many defects in the law of England. The common law, which is the result of the traditional lore of ages, is in the position of the books of the Roman law before they were digested under the superintendence of Tribonian,—a mass which defies the industry of any ordinary lifetime to master its contents. Its bearing upon any given point, instead of being contained in an enunciated command by the legislature, is to be solved by the interpretation of multitudes of unauthorized comments, or conflicting decisions. It possesses the additional evil, that, even when its tenor seems to be comprehended, no man can tell whether what he has so come to the understanding of be in reality the law; for it has received no authoritative sanction from any legislative power, and is only the opinion of certain unauthorized commentators.

The other department of the law—the statute law—is indeed the command of the authorized legislature: but it is a command perplexed by unintelligible language, confused, gigantic in its proportions, and deficient in internal facilities for reference and discovery. When a law is to be altered, there is an act passed, “to amend an act,” &c.; when there is another alteration, there is an act passed, “to amend an act—to amend an act,” &c., &c.* There is a popular method of referring to acts of Parliament as being such a chapter of such a session (*e. g.* the act 57 Geo. III. c. 101); but when reference is made in the amending statute to that which is amended, there is no such abbreviated mode adopted,—the act is described by its title, so that it can only be found by a search among all the acts of the session. In popular language too, the acts are divided into sections, which are numbered consecutively: but this facilitation is unknown in law, and consequently the section of an act, when an alteration of it is made by any subsequent act, is only referred to by vague description. In one session of Parliament there are frequently upwards of a hundred acts passed, and many of these will be found to contain upwards of a hundred sections; yet when, in a future session, there is an alteration made on one of these sections, it is only singled out from the mass in the vague manner above described. It will generally happen, that some members of the official establishment chiefly connected with the operation of any series of statutes will have mastered their contents; while the public in general are profoundly ignorant of

* Specimen of the title of a statute,—The 57 Geo. III. c. 101:—

An act to continue an act intituled, *An act further to extend and render more effectual certain provisions of an act passed in the twelfth year of the reign of His Majesty King George the First, intituled, An act to prevent frivolous and recalcitrant arrests; and of an act passed in the fifth year of the reign of His Majesty King George the Second, to explain, amend, and render more effectual the said former Act; and of two acts passed in the Nineteenth and Forty-third years of the reign of His present Majesty, extending the provisions of the said former Acts.*

the whole subject, or know it only in so far as they may have suffered by making mistakes. Yet there are collections of statutes so extensive, that it may be questioned if even those official persons whose peculiar duty it should be to enforce them are well acquainted with their contents. There are at this moment (1842) upwards of 130 statutes, more or less in force, in relation to the Stamp Laws.

The main remedy proposed by Bentham for the evils arising out of the confusion and bulkiness of the laws, is in codification,—in a general revision of the existing laws, the rejection of the antiquated and useless portions, (for there are many acts, still part of the law, which are not enforced, solely because our civilized age affords no machinery for executing them, or because public opinion would set too strongly against any man who would have the barbarity to put them in force,) and the reduction of those parts which should be preserved, to a clear order, and to precise and intelligible language. The objections to this project are not in the form of argument, but in the simply negative shape of the neglect to perform that of which the utility is so clearly proved. The good to be accomplished would be great; but the labour too would be great: and no Atlas has been found among ministers of state to put his shoulders to the task. Nor does there seem, indeed, to be any individual on whom the responsibility of the non-performance of this mighty task can be specially thrown—it is simply a great and difficult project, for the public benefit, unperformed. It is true, that Bentham did himself offer to undertake this task: that he left behind him fragments of its execution in almost every branch of the law, and that he completed the constitutional branch in a shape rendering it fit for use, whenever those who have the power shall have the inclination to adopt it. But it was, perhaps, still less to be expected, that any code of his own fabrication should have been accepted of, than that the justice of his earnest pleadings, in favour of a simplification of the law,

should have been admitted, in some attempt to prepare a code under other auspices. A code, drawn up by Bentham, must have not only received the advantages of his clear arrangement and accurate legislative style, but must, in substance, have conformed with all his opinions of what the law ought to be. It would not have been the laws of England consolidated or embodied in a code, but a new code of laws, prepared on the utilitarian system. It was one thing to admit his reasoning in favour of a code, but another and a totally different thing to admit that the code ought to embody in it the principles of the utilitarian philosophy. The Constitutional Code is, for instance, a system of government arrangements adapted to a republic. Of the many who might be favourable to codification, few might be republicans, and still fewer would be ready to attempt to achieve a republic in this country. The Code Napoleon was the adoption of Bentham's opinion in favour of codification; but the great patron of that measure, while acknowledging the advantage of having the laws simplified, would have been among the last men in the world to permit Bentham to prepare the substance of the laws which were to be so reduced to order.

It is true, that Bentham would not have been deterred by restrictions and limitations from devoting his time to the service of the public as a legal draftsman. If he had been directed, by those in power, to simplify any branch of the law, reserving our feudal institutions, and reserving, likewise, any other peculiarities in the laws, which the government had come to the resolution to leave unchanged,—while regretting the barbarism which adhered to machinery, in his eyes antiquated and cumbersome, he would have been ready to devote his time and talents to the task of fitting them for such good uses as they were capable of accomplishing. He exemplified this disposition in his Project of a General Register of Real Property, communicated to the Real Property Commissioners. In his cor-

respondence with foreign countries, indeed, he showed how ready he was to turn the least promising institutions to use; and, in the case of the Tripoli papers, we find him suggesting a series of arrangements, by which the protection of personal liberty may be made consistent with an Eastern despotism, and a limited toleration with the principles of Mahomedanism.*

But the principle of codification has not been without some practical concessions to its utility by our legislature. The statute penal law of England has been brought into a state far more nearly resembling a code than it was when the author wrote the greater part of his attacks on it. Improvement and codification have here gone hand in hand; and the system, perhaps, only waits for the removal of some of its relics of barbarism, to be finally condensed into a code, as concise and intelligible as the plan on which our Acts of Parliament are drawn will admit of. A further concession to the principle is to be found in the consolidation of the Customs and Excise laws, and the laws regarding shipping, which are intimately associated with them. The plan taken, with regard to the far more complicated department—the Custom House Laws, was this. In 1825, search was made in the Statute-book for all existing acts relating to the customs, and they were repealed in the mass. It would appear that the duty of deciding what statutes did, and what did not bear on the subject of the customs, was too onerous to be undertaken even by those who had all the appliances and ends of the government in their favour; for when the Customs laws were again reviewed in 1833, it was found necessary to pass a general repealing clause as to, “All acts and parts of acts relating to the Customs,” without any farther attempt to enumerate them,† (3 & 4 Will. IV. c. 50.)

The ground being thus cleared, a Custom House Code was created, in ten statutes, each embracing some distinct department of the Customs and Navigation Law. The cumbrous form of our statutes, and their incapacity to provide any system of division and arrangement, prevented this code from approaching to the state of order and intelligibility which its author, Mr Hume, seems to have been anxious to achieve for it; but he endeavoured to compensate as far as possible, by marginal headings and an indicative rubric, for the necessarily unarranged substance of his acts; and these Customs acts are the only statutes which are divided into compartments bearing a resemblance to the division of a literary work into chapters. In the interval down to the year 1833, many additions had been made to the Customs laws; and, to prevent confusion, all these additional laws, along with the consolidated Statutes of 1827, were repealed, and new consoli-

title of the act 23 Geo. III. c. 26: “An act to continue several Laws for the better regulating of pilots, for the conducting of ships and vessels from Dover, Deal, and Isle of Thanet, up the rivers of Thames and Medway; and for permitting rum or spirits, of the British sugar plantations, to be landed before the duties of Excise are paid thereon; and to continue and amend an act for preventing frauds in the admeasurement of coals within the city and liberty of Westminster, and several parishes near thereunto; and to continue several laws for preventing exactions of occupiers of locks and weirs upon the river Thames, westward, and for ascertaining the rates of water-carriage upon the said river; and for the better regulation and government of seamen in the merchant service; and also to amend so much of an act made during the reign of King George I., as relates to the better preservation of salmon in the River Ribble; and to regulate fees in trials at assizes and *nisi prius*, upon records issuing out of the office of Pleas of the Court of Exchequer; and for the apprehending of persons in any county or place upon warrants granted by Justices of the Peace in any other county or place; and to repeal so much of an act, made in the twelfth year of the reign of King Charles II., as relates to the time during which the office of Excise is to be kept open each day, and to appoint for how long time the same shall be kept open each day for the future; and to prevent the stealing or destroying of turnpicks; and to amend an act made in the second year of his present Majesty, for better regulation of attorneys and solicitors.”

* Works, vol. viii. p. 555 *et seq.*

† The number, and the heterogeneous nature, of the subjects frequently embraced in one act, render it extremely difficult to trace the whole legislation of the Statute Book on any one given subject. The following is the

dated statutes were constructed from their fragments; thus rendering it unnecessary for the searcher among the customs laws, to go farther back than the year 1833.*

While urging the utility of a general code, and the importance of a complete or partial reconstruction of the law, Bentham did not lose sight of the immediate practical advantages of an improvement in the system of drawing the statutes so as to make them more intelligible to the public, and consequently more servicable as rules of action. In an examination of the vices of the existing method of drawing acts of parliament, he found that there was a departure from the common colloquial and literary language of the country, which, instead of diverging from it in the direction of precision and conciseness, led to vagueness and verbosity. The departure from the ordinary forms of expression was thus an evil, not compensated by any advantage in the shape of a more scientific style. He found that there was unsteadiness in respect of expression, occasioned by a want of fixed words having definite ideas connected with them. The draftsman, not having in his mind any distinct nomenclature, overloads his work by employing a number of words to mean the same thing, lest, if he should restrict himself to one, he might choose one which did not fully embrace the meaning intended. In this manner, that which could have been well accomplished by the use of one word with a determinate meaning, is imperfectly accomplished by the use of several words without any fixed signification. Thus, there frequently occur such pleonasms as "all the powers, authorities, methods, rules, directions, penalties, clauses, matters, and things," "use, exercise, apply and put in execution," † &c., all referring to the same thing, but by their number rendering what they refer to more vague instead of more clear. It is an additional defect refer-

able to this source, that when the same thing is thus mentioned more than once, the collection of words by which it is referred to does not happen to be precisely the same on each occasion, and thus dubiety is created in the mind of the reader.

It was found that clauses of acts, instead of consisting of separate enactive propositions each with its own verb, constituted each of them, a series of sentences heaped together, the same verb serving for a variety of propositions. The bad effects of this system are two—it makes the sentence too long for full and clear apprehension by ordinary intellects; and it renders it liable, from its complexity, to dubiety and ambiguity of interpretation.

In an English act of Parliament, in each section the connexion given to the matter is commonly such, that when once the mind has entered upon it, no repose is to be had till it has reached the end of it: no, nor then neither, unless such be the strength of its grasp as to give assurance of its retaining, in a full and distinct point of view, the whole mass of the matter which, parcel after parcel, it had in the course of its progress through the section been taking up.

So much worse than absolute redundancy is longwindedness, that if in any instance, under the oppression produced by longwindedness, it were deemed necessary to seek relief,—relief would in many, and indeed in most instances, scarcely be to be found on any condition other than that of adding to the number of words.

Another imperfection of the first order, to which this imperfection of the second order will, whether constantly or not, be naturally and frequently conducive, is *bulkiness*. As the entanglement runs on, the obscurity thickens—as the obscurity thickens, it attracts more and more the attention of the penman:—fearing lest the mass should grow too involved, and through much entanglement too obscure for use, he sets himself to disentangle it—to point out this or that distinction in the provision meant to be made respecting the subjects thus involved. But as by words it was that the matter was entangled, so it is only by words that the disentanglement can be effected, or so much as aimed at: and thus it is, that while increase is given to *obscurity*, so is it to *bulkiness*.‡

* See on the subject of Codification, vol. iii. p. 155 *et seq.*; 205 *et seq.*; iv. 451 *et seq.*, 503 *et seq.*; v. 439, 546 *et seq.*

† Quoted from the Income Tax act, 5 & 6 Vic. c. 35.

‡ Works, vol. iii. p. 248-251. See on the subject generally—Nomography, or The Art of Inditing Laws, vol. iii. p. 231 *et seq.* No better examples could be given of statutes drawn on the principles recommended by Bentham, than the Illustrations of his own system given by

So much with regard to those internal qualities in the construction of the laws, which might serve to make them accessible as a rule of action. An external means of accomplishing the same end, is, in the Promulgation of the laws when they are enacted, among those whose obedience they demand. Bentham looked

Mr Symonds, in his communication on the "Drawing of Acts of Parliament," presented among the Parliamentary papers in 1838. The following is a portion of the act 4 & 5 Will. IV. c. 31, for the reduction of the 4 per cents, given along with Mr Symonds' improved draft. It has to be noticed that in his original there is a clause for explaining the abbreviated expressions used by Mr Symonds.

EXISTING ACT.

I. Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all and every person and persons, bodies politic or corporate, who now is or are or hereafter may be interested in or entitled unto any part of the National Debt redeemable by law which now carries an interest after the rate of four pounds per centum per annum, and is usually known by the name of "Four per centum annuities one thousand eight hundred and twenty-six," payable at the Bank of England, and who shall not signify his, her, or their dissent in manner hereinafter mentioned, shall, in lieu of every one hundred pounds of such four pounds per centum annuities, respectively receive and be entitled to the sum of one hundred pounds in "The new three pounds and ten shillings per centum annuities," and to carry an interest after the rate of three pounds and ten shillings per centum per annum, and so in proportion for any greater or less amount than one hundred pounds of such four pounds per centum annuities respectively; and that the dividends thereof shall be payable half-yearly, at the Bank of England, upon the fifth day of January and the fifth day of July in each and every year; and the first dividend, namely, one quarter of a year's dividend, on the said new three pounds and ten shillings per centum annuities shall be payable at the Bank of England on the fifth day of January one thousand eight hundred and thirty-five; and that the said new three pounds and ten shillings per centum annuities shall be subject and liable to redemption at any time after the fifth day of January one thousand eight hundred and forty, and not before that period; and that the said new three pounds and ten shillings per centum annuities shall be free from all taxes, charges, and impositions, in the like manner as the said four pounds per centum annuities.

II. And be it further enacted, That the interest and dividends payable in respect of the said new three pounds and ten shillings per centum annuities shall be charged and chargeable upon, and shall be issued and paid out of, the Consolidated Fund of the United Kingdom of Great Britain and Ireland, in the same manner as the interest and dividends of the said four pounds per centum annuities respectively now stand charged on the said Fund.

III. And be it further enacted, That all and every person and persons, bodies politic or corporate, who shall not, on or before the twenty-eighth day of May one thousand eight hundred and thirty-four, signify his, her, or their dissent from accepting and receiving a share in the said new three pounds and ten shillings per centum annuities, in lieu of his, her, or their respective shares in the said respective four pounds per centum annuities, or for any part of such respective shares in such last-mentioned annuities, in the manner hereinafter directed, shall be deemed and taken to have consented to accept and receive the same: Provided always, That if any proprie-

IMPROVED DRAFT.

II. CONVERSION OF FOUR PER CENTS.

1. *Conversion.*

£3½ per cents.] AND BE IT ENACTED, That the said four per cents shall be converted into three-and-a-half per cents.

2. *Redemption.*

Period of Redemption.] And such new three-and-a-half per cents shall not become redeemable until the fifth day of January one thousand eight hundred and forty. And thenceforward they shall be redeemable.

3. *Consolidation.*

New three-and-a-half per cents.] And the several annuities of three-and-a-half per cents created by this act shall be consolidated with the annuities bearing interest at the rate of three-and-a-half per cent existing at the time of the passing of this act, called the "New three-and-a-half per cent annuities." And these annuities shall be one capital or joint stock.

DISSENTS.

1. *Rights of Dissentients.*

Payment of Dissentients.] AND BE IT ENACTED, That every person who dissents from accepting the new three-and-a-half per cents in lieu of the said four per cents shall be paid off.

Periods of Dissenting.] But all persons so dissenting shall signify their dissent to the Bank of England, within the time specified in the schedule of dissentients, contained in the Appendix of Schedules.

2. *Absent Dissentients.*

Proof of Absence.] And in order to entitle a dissentient proprietor, absent from the United Kingdom, or from Europe, to the extended periods given in the said schedule, he shall prove to the satisfaction of the Governor and Di-

upon this service as one of the most unexceptionable in which the public money could be employed. He considered that every practicable means should be adopted for bringing before the eyes of the citizen the laws he is called on to obey, and that, in their distribution, profusion is the safer error. He thought that so much of instruction in the laws as could be conveyed to the mind in youth should be taught in schools, and that the books in which the laws are printed, if not given gratuitously, should be purchasable at a merely nominal price. He proposed that the portions of the law which affected particular classes of persons should, separately from the general body of the law, be distributed among those whom they particularly affected. Thus, each soldier on enlistment should receive a copy of *The Soldier's Code*,* and each mariner on joining his profession should receive a copy of *The Seaman's Code*.†

An individual conducting a trade subject to the operation of the Revenue laws, should, on the same principle, have a copy of *The Revenue Code*.

He proposed that each separate description of contract should have a species of paper set apart to be used in embodying its terms; and it was one of the services to be accomplished by this arrangement, that the paper should contain on its margin, an abridgment of the law relating to the contract. In markets and other places of public resort, the peculiar regulations of which might be of sufficient brevity for being so promulgated, the old Roman system should be adopted, of having them legibly set forth on tables adapted to public inspection. In Courts of justice, the forms of Procedure, and the respective duties of the Judges, the Officers of Court, the Lawyers, Parties, Jurors, and Witnesses, should be exhibited in the same manner.‡

To enable the public the better to

tor or proprietors of the said respective four pounds per centum annuities shall not have been within the limits of the United Kingdom at any time between the eighth day of May and the twenty-eighth day of May one thousand eight hundred and thirty-four, both days inclusive, but shall have been in any other part of Europe, it shall be lawful for such proprietor or proprietors to signify such dissent at any time before the sixth day of July one thousand eight hundred and thirty-four: and if any such proprietor or proprietors shall not, at any time between the eighth day of May and the fifth day of July one thousand eight hundred and thirty-four, both days inclusive, have been within any part of Europe, it shall be lawful for him, or her, or them to signify such dissent at any time before the first day of March one thousand eight hundred and thirty-five; such proprietor or proprietors proving to the satisfaction of the Governor and Directors of the Bank of England, or any two or more of them, his, her, or their absence from the United Kingdom, or out of Europe, as the case shall happen, and that his, her, or their share or shares of such four pounds per centum annuities stood in his, her, or their name or names respectively, or in the name or names of any one or more trustee or trustees on his, her, or their behalf, on the eighth day of May one thousand eight hundred and thirty-four, in the books of the Governor and Company of the Bank of England; and provided also, That such proprietor or proprietors so absent from the United Kingdom, or out of Europe, shall signify his, her, or their dissent within ten days after his, her, or their return to the United Kingdom.

* See Works, vol. ix. p. 355.

† Ibid. p. 412. This arrangement is proposed in conjunction with a Plan for registering merchant seamen, and for defining their duties and the power of their officers. The principle of these suggestions has been realized in the Merchant Seaman's Act, 5 & 6 Will. IV., c. 19.

‡ See, generally, as to the Promulgation of the Laws, Works, vol. i. p. 157 *et seq.*; iv. 455; vi. 65, 522, 578.

rectors of the Bank of England, or any two of them, (1.) The fact of absence, within the times limited in the schedule; and, (2.) That his share of such four per cents stood in his name, or in the name of a trustee on his behalf, on the eighth day of May eighteen hundred and thirty-four, in the Bank books.

comprehend the full tenor and object of the laws when promulgated, he proposed that they should be accompanied by a *Rationale* or series of reasons. The necessity of adopting such a course would, he maintained, make the laws themselves more rational; for legislators, being bound to give reasons to the public, must have reasons to give, and would not be likely to frame laws on the dictate of caprice or tyranny. An acknowledgment of the principle is to be found in the Preambles of Acts of Parliament; but as in this case there is only one general reason given for the tone, as it were, of the whole statute, and not a reason for each individual enactment, the check is, necessarily, very imperfect. Having the reasons along with the laws, the public, it is believed, would not only have more confidence in the justice of the enactments, but, seeing their use, would have a guide to honest and sincere obedience, which the simple terms of the command conveyed in the law itself might fail to provide them with. There have been many breaches of law that would never have occurred, if those who had committed them had been reasoned into the opinion that the laws were just.*

The principles on which the judicial establishment of a country should be founded, occupied Bentham's mind from an early period of his life to the end of his days. In 1790, he published the draught of a Code for the organization of the Judicial establishment in France;† and the arrangements there suggested only differ in their being less fully developed, from those which he embodied in the Constitutional Code,‡ at different times subsequently to the year 1820. In both, there is a system of Local courts, for the purpose of bringing justice as near as it can practicably be brought to every man's door; the general principle of admeasurement being such as will allow every inhabitant of a district to go to and return from the Judgment

seat in one day. In both works, and in almost all his numerous works on Law Reform, he desired that justice should be administered in each court by a single judge, for the reasons of which a sketch has been given in the preceding Section in connexion with responsibility (see p. 50-51.) He thought that the habits of a practising lawyer, keeping the mind in a constant state of active partisanship, did not form a suitable school for judges, whose duty it is to hold the scales of justice with a steady hand. On the other hand, he considered, that permitting any class of men, not trained to the study of law and the weighing of evidence, (*e. g.* justices of peace and municipal magistrates,) to administer justice, was nothing better than a permission to one section of the community to sport with the property and liberties of all others. His own plan contemplated the education of a class of lawyers for the bench. He suggested the appointment of deputies to the regular judges; and, through the instrumentality of this arrangement, he would provide for those who have been induced to fix upon the bench as their profession, getting an introduction, and the opportunity of practice and experience, as assistants in the lowest grade, rising thence according to their abilities and exertions.§ He held that the judgment-seat should be accessible at all hours of the day and night—that justice should sleep only when injustice slept. To provide this accessibility at the smallest cost, is the object of many minute provisions in the Constitutional Code.|| The delays occasioned in England by the system of circuits and vacations, are the object of repeated and severe denunciation.¶

A common feature of both his earlier and later works on judicial reform is, the appointment of Public Prosecutors, and of Advocates for the Poor.** The latter proposition is connected with the

§ See Works, vol. ii. p. 22; iv. 357, 368; ix. 544 *et seq.*, 592.

|| Ibid. vol. ix. p. 515 *et seq.*; iv. 356.

¶ Ibid. vol. iv. p. 336; vii. 243, 371 *et seq.*

** Ibid. vol. iv. p. 354 *et seq.*, 384 *et seq.*; ix. 516 *et seq.*, 570 *et seq.*, 577 *et seq.*

* See Works, vol. iv. pp. 454, 491, 538; viii. 517; ix. 1.

† Ibid. vol. iv. p. 285.

‡ Ibid. vol. ix. p. 454 *et seq.*

view, that justice, instead of being sold to the highest bidder, should be presented gratis, whenever this can be done without preponderant mischief. The evil that might occur from offering the assistance of the law to every one who might desire it, without cost or personal exertion, would undoubtedly be the entailment on the community of ceaseless lawsuits, carried on by all its litigious members. On the other hand, there is the consideration, that it is not he who gains it only who profits by a lawsuit, but that the public have an advantage, in the establishment of a precedent, and the exhibition of justice vindicated. The expense of employing lawyers in the vindication of a just claim, is of itself sufficiently oppressive: the addition of taxes on law proceedings, and fees to the court and its officers, is simply the taking advantage of an opportunity for pillaging the oppressed. The opinions of Bentham have been so far conceded to, that taxes on law proceedings have been abolished, and that fees have been, in almost all the courts of the empire, much reduced. Still the nation does not provide sufficiently for justice being done to the helpless. When a man, because he cannot afford to pay for it, is denied the service of the law to procure justice, it is proclaimed that the nation is still only on its way from that state of things "where he should take who has the power, and he should keep who can."*

He considered the system of having different courts for the adjudication of different classes of causes, to be most perniciously productive of complexity and expense. The division of the English system—a division happily unknown in Scotland and in the rest of Europe—into common law and equity, afforded him a flagrant exemplification of the evil. The law by which each man's rights and duties are defined should be homogeneous,—each portion connected with the others, and the whole capable of being brought within the grasp of one mind. If one judge can-

not administer the whole law, what chance has any private citizen of knowing enough of it to keep him from transgression? It does not follow that the division of the law into two systems makes any approach to a division of labour. The effect generally is—and it is strikingly developed in England—to make each portion more complicated and extensive than the whole would be under a uniform system. The very preservation of the boundaries between two such systems creates a science by itself. He thought, however, that while the jurisdiction of the courts of ordinary law ought to be partitioned according to geographical principles solely, that there was still room, in the case of persons separated from the position of the ordinary citizen, for tribunals having in view the administration of their rights and obligations among each other. On this principle he contemplated courts-martial, and ecclesiastical courts, as tribunals of exception.†

With regard to trial by jury, on which Bentham has written much,—partly in relation to the best method of reforming it, and partly for the purpose of rationally limiting its operation,—he was of opinion that, in the case of criminal charges, it was a necessary protection; but that the existing system demanded many reforms, and among others the discontinuance of unanimity, and the abolition of the Grand jury. In civil actions, he thought the operation of the system should be much restricted. He objected to the unbending rule which forces the case before a jury, when both parties might prefer the decision of a judge. He considered that the part which a jury has to act—that of a committee of the citizens at large to watch the operations of the bench—need not be so palpably exhibited, and that it might be presumed that the judges have honesty and public spirit enough to do right, without the constant presence of so imperative a check. In a country where there is publicity for justice, and a high tone of public opinion, he be-

* See Works, vol. ii. pp. 211, 431, 573 *et seq.*: vii. 199

† See Works, vol. iv. p. 334; v. 473, 525; vi. 134; vii. 291 *et seq.*

lieved that supervisance, especially if added to the influence of the appeal system, would make judges cautious, and would secure a nearer approach to clear substantial justice, than can be found in the oscillations of the jury system. He proposed then, that in ordinary civil cases, the jury should be had recourse to only in the way of appeal,*—a plan by which, while no one who wished to have his case judged “by his country,” as it is termed, could complain that the boon was refused him, the number of jury trials, and, consequently, the expense of the system, would be much diminished. In the Constitutional Code, the juries, under the republican system there promulgated, are merely to be assessors to the judge, under the title of Quasi-jurors.†

The method of so conducting the proceedings of the courts of Law, that they might administer justice accompanied with the smallest possible amount of delay, vexation, and expense to the litigant, is a subject referred to in almost all the works of Bentham, which bear on law reform. One work, “the Principles of Judicial Procedure,”‡ is devoted to the organization of such a system. The various facilities for coming rapidly at the knowledge of the question at issue, keeping up a communication between all the parties concerned in the discussion, securing obedience to the decision pronounced, &c., cannot be here enumerated; § and it will be impossible to go into detail beyond a slight glance at that principle of personal responsibility, which peculiarly characterizes the whole system. As the public interest requires personal responsibility on the part of all public officers, so does it on the part of those who, by an appeal to the law, exercise the privilege which every one should be possessed of, of demanding the performance of judicial services—in

other words, of litigants. To this end it is a leading principle of judicial procedure, that litigants should be confronted with their judges and with each other, that they should be questioned as to the statements on which they found, and that they should be made responsible for falsehood, whether it be uttered with the deliberate design of deceiving, or be rashly stated without that amount of consideration which a man gives to his words when the consequences of a mistake fall upon himself. The litigant is to be entitled to employ a professional assistant; but grades of professional lawyers transacting different departments in lawsuits—as represented by barrister and attorney in English practice—are objected to. In an ordinary lawsuit, the country attorney receives his client's communication, and transfers it to the town attorney, who communicates it to the barrister. From the variety of the channels through which the history is thus communicated to the judicatory, impediments are created to the discovery of the party who may be the author of any falsehood that may have been uttered; and there is a general frittering away of responsibility for the proper conduct of the cause. Let the party himself be accessible when wanted, and let him have but one adviser between him and the judge: falsehoods will then be easily traced to their source, and being so traceable, will not be so readily committed.||

The privilege possessed by counsel, of stating facts which they do not believe to be true—whether in civil or in criminal cases—is denounced as tending to the perversion of justice, and to the confusion, in those quarters where bad example is most dangerous, of the distinction between right and wrong—between truth and falsehood. The false morality of the profession, on this point,

* See Works, vol. ii. p. 122.

† Ibid. vol. ix. p. 554 *et seq.*

‡ Beginning of vol. ii. of the Works.

§ In connexion with the subjects of Evidence and of Punishment, some of the views in relation to procedure are elsewhere incidentally noticed.

|| In the operations of Procedure, various incidents are found which tend to fritter away personal responsibility. Thus, witnesses examined on affidavit are represented in the minutes of evidence in the third person; and there is thus an article of confusion introduced which prevents them from determining whether their evidence is accurately minuted or not.—See Works, vol. vi. p. 439.

is repeatedly and severely attacked by Bentham; and his animadversions have in view the alternative of either producing a legislative remedy, or, by the force of reasoning on the public and the profession of the law, of raising the standard of morality in relation to this practice. To see the full extent of the hardships that may be occasioned by fraudulently false, or lax statements in relation to lawsuits, it must be remembered, that the very fact of requiring to be a party to a litigation is itself a hardship, which, if it cannot be saved to the party who is in the right, should at least be so arranged that its pressure may be as light upon him as it can be made. The person who, by a certain document called a writ, can compel another man to lodge

a document in answer, or to appear before a court, possesses a power of persecuting his fellow citizens, which no one should possess uncontrolled. If there were no punishment, by the infliction of costs or otherwise, on the *malâ fide* suitor, his power of annoyance would be nearly absolute; and it is precisely to the extent to which there is a check on his privilege of telling falsehoods, that the public are protected from the machinations of the judicial persecutor. Where there are great inequalities in point of wealth, the extent of hardship which may be thus committed is enlarged; and thus the rigorous enforcement of veracity, in legal pleadings, is the poor man's protection against the tyranny of the rich.*

SECTION VI.

PRINCIPLES OF PUNISHMENT.

THE end of punishment is the prevention of crime; and all punishments inflicted under any other impulse, are wasted, or run the risk of being so. There is no other criterion of punishment which can be a fixed one. There may be mistakes and disputes as to what description of punishment is in reality best calculated to prevent crime; but with this principle in view, reasoners have a common field of argument; and the course of experience, enriched by the collection of statistical facts, will check aberrations, and bring the disputants more closely to each other in their mutual approach to accuracy. Those principles of punishment, if they can be called principles, which are involved in popular dicta, are as vague and indefinable as the human mind is various in its passions and prejudices. The simple word "ought," sometimes involves the whole of the principle expounded. Murder *ought* to be punished with death. Forgery *ought* to be punished with death, &c. The supporters of a ministry will say, "sedition ought to be punished with transportation," because they wish to humble and persecute their opponents. The opposition

will say it ought not to be so punished—wishing to protect their friends from evil. When a riot takes place at an election, the party injured says the conduct of the mob was "dastardly brutal and ruffianly, and a parcel of them should be hanged:" those on the other side "are far from vindicating the conduct of the rioters; but it was a mere petty ebullition of party spirit, and a few days imprisonment will be a severe enough retribution."

But it is not only in offences of a political character that the divergencies of the popular principle of punishment are exhibited. Each man, with his mind concentrated on his own interest and pleasure, holds all offences that militate against them as the most atrocious with which society can be visited; and when he has the power, he acts the Nero and Domitian, and exterminates those who give him trouble. Thus is it that the landholders of England, being resolved, at all hazards, to preserve to themselves the sports of the field, and having the power, through their pre-

* See, besides the Principles of Procedure, Works, vol. ii. pp. 58, 73, 577; iv. 318; vi. 136, 297, 337; vii. 202, 230, 262, 373.

ponderant representation in parliament, of making what laws on the subject they think fit, have enacted a code of game laws, which renders the preservation of the lives and morals of the people secondary to securing the monopoly in the destruction of hares and pheasants; and makes provision that the country should become depopulated by the transportation of criminals, rather than that the squire's preserves should be thinned.

When an attempt is made to involve the popular feeling on the subject of punishment, in a proposition or principle, it does not in general become more reasonable. It is said that the punishment "should be equivalent to the offence;" or "should be of the same character as the offence;" or "should be like the offence." There are no two things which less admit of real parallelism (however much they may of imaginative) than punishments and offences. Of two persons, precisely in the same rank of life, and of the same bodily frame, the one gets the other held down by accomplices, and inflicts on him certain blows with a stick. In this case it would not be difficult to assign a punishment precisely the parallel of the offence. But take another case. A thief puts his hand in a banker's pocket as he is returning home from business, and extracts therefrom a bundle of bank notes. Where are the elements of similarity in the position of the two parties, out of which a punishment similar to the offence can be created? Nor, if the problem of finding a parallel could be solved, does it appear very distinctly how the public could be benefited by the elaboration of such a specimen of curious uniformity.

But another principle of punishment, and by far the most common, (for it has existence in many a bosom which is unconscious of its presence,) is retaliation—in other words, revenge, or obedience to the impulse of wrath. The case of an election mob cited above, may serve as an illustration. The principle of retaliation is frequently vindicated, as if it could be reduced to a fixed rule: but how can it be so, since, as has been already shown, there can be no parallelism

between punishments and offences? For the very small number of cases which occur, exactly in terms of the instance of assault above cited, it would be easy to fix the rule of retaliation, by making the punishment identical with the offence. But who is to make a rule of retaliation for the banker robbed of his notes? The legislator has the whole field of inflictions out of which he may choose one which shall be a retaliation, and it is needless to say that his view of retaliation will be whatever his passions dictate. If the legislature should consist entirely of bankers, when he who has been robbed joins his peers with an empty pocket and inflamed passions, which sympathy and common interest propagate through the assembly, the retaliation, it is easy to believe, will be fierce and crushing. If the legislature should consist entirely of spendthrifts and penniless younger sons, the sympathetic excitement would not be so intense, and the punishment would be more reasonable. If the legislature should consist of blacklegs and pickpockets, the worthy banker would be laughed at, and sent about his business. This last result, intended to exemplify the fallacy of any appeal to parties interested in an injustice, is not without a modified exemplification in this country. Bentham repeatedly refers to the exemption of real property from simple contract debts—the power of landed proprietors to undertake pecuniary engagements and protect their property from being seized in fulfilment of them. It was not until after his death, that this anomaly was partly rectified.*

It has to be noticed, that the retaliatory and other barbarous principles of punishment have produced counter-fallacies among those who have been groping about for the sound principles of punishment, and have been unable to find them. Thus, those who have an indistinct view of the defects of the punishment of death, say, "You are not entitled to deprive any man of the life which God has given him;" or, perhaps, "you are not permitted to take life, but

* See Works, vol. v. p. 533; vi. 85.

for the crime of murder." There is a text in Scripture which, referring to the effect of violence in rousing the retaliatory propensities of mankind, says, "Whoso sheddeth man's blood, by man shall his blood be shed"—meaning, that while men are beings of passion as they are, one violent death will naturally follow another. It is under the shadow of what is apparently a misinterpretation of this text that the exception to the rule as to the title to punish with death is generally ensconced. It is to capital punishment that the question of title is usually restricted, but sometimes it is extended to others—thus, "you are not entitled to make a slave for life, of a man born free," &c.—the term, for life, being generally inserted, because, if the punishment of slavery or the restriction of liberty were abolished, it would be difficult to find a means of inflicting any punishment on any one who has not palpable property capable of being seized. In the utilitarian system, the question of title is very simply disposed of, by striking the balance of good and evil to society at large. If there are cases in which the infliction of the punishment of death leaves a balance of good—that is to say, if more evil would be done to society through the inducement to crime that would exist were the punishment more lenient, than the evil occasioned by the infliction of the punishment—then let death be the allotted penalty. It will be for every man who has anything to say in the legislation of his country, to examine the question according to his abilities, to strike the balance, and to act accordingly. The conclusion come to by a member of the legislature will bear strongly on the result: that of an elector will have less effect, and that of a non-electors whose influence on the legislature is merely that of reasoning, will have still less: but it behoves them all, as members of society, to take the same method of coming to a right judgment.

It has been already remarked, that the Utilitarian Philosophy, like the Baconian, has not tended so much to point out any perfectly new direction to the

human intellect, as to keep it steady in a course of which it had previously but a slight and vague knowledge, and from which it was every now and then straying. There is perhaps no department of the subject in which this is better developed, than the philosophy of punishment. On appealing to a moderately educated man in any civilized country, he would probably be found to admit, in some vague or general terms, that the object of punishment is the repression of crime. Yet so far have men, in the pursuit of their secondary ends, lost sight of this, the main one, that in England it became a general feeling, that it mattered not how many murders were committed, provided some one were hanged for each. Of the legitimate results of a scientific inquiry into the subject on the utilitarian principle, such as that carried on by Bentham and his disciples, the improvements which, for several years past, the legislature has been making in the administration of criminal justice, are so many illustrations.

In calculating the proper weight of punishment, the first element that comes into consideration is the offence. When it is scientifically examined, an offence is found to consist of more elements of evil than those which directly meet the senses. Bentham found a simple method of classifying the evils of a mischievous act, by dividing them into the primary and the secondary.* A man is murdered on the high-way: the death of the individual is the primary evil. The secondary evils arise out of the danger there exists of other people being murdered either by the same man, or by others following his example, and the alarm so occasioned in the neighbourhood. But it depends on a number of minute circumstances, what will be the extent of this danger and alarm, and, as a consequence, what will be the best legislative measures for protecting the people against them,—and hence arises Bentham's scientific analysis of crimes and their results, and his rules for adapting the punishment to the exigencies of each occasion.

* See Works, vol. i. p. 69 *et seq.*, 215 *et seq.*; vi. 535.

To this end, in looking at the consequences of a mischievous act, among other circumstances, the following are kept in view: 1st, The state of the actor's mind as to voluntariness or involuntariness. Thus, deliberate murder shows a disposition at war with mankind, from which anyone may suffer who is in the position of supplying the assassin with a sufficient motive; while death, occasioned by carelessness, shows a want of respect for life, which the public must protect itself from; and uncontrollable accident is a source of mischief which punishment cannot protect from, and as to which its infliction would be thrown away. 2d, The motive of the offender. Thus, the motive of acquisition being in continual action, is found to be the most dangerous. When a man slays for vengeance, he only strikes his enemy; if he be allowed to go unpunished he will be prepared to slay some one else, but not till there has been a cause of enmity. The example of his impunity will encourage others to slay also, but only their enemies. But when a man murders for the sake of robbery, he acts on a motive which all men feel more or less towards all others; and those whom impunity encourages to follow his example, see victims in all of their fellow-beings who have anything to be deprived of. Other circumstances to be held in view are, the situation of the perpetrator in regard to the means of repeating the act, his means of concealing such acts, his means of escape, the obstacles he has overcome, the extent of temptation which was necessary to induce him to combat with them, &c. The position of the party injured must also be taken into view. Females, children, and invalids, require protection from acts against which able-bodied men need none. The poor require protection from injuries to which the rich are not liable,—such as oppressive litigation. The rich, on the other hand, have their peculiar demands, chiefly arising from the superior amount of their property, on the protection of the law. There are, besides, many other circumstances in which the richer and higher classes of society are subjected to evils which do not fall on the lower. Their

tastes and habits are more fastidious, and should be protected from wanton outrage. They possess a greater proportion of objects in which there is a "value in affection,"—such as heir-looms, old pleasure-grounds, &c.; and the law ought to look on these as having a value beyond their mere intrinsic worth.*

When the extent of the evil to society occasioned by each offence, has been as accurately estimated as human knowledge and reason admit of its being, the counteracting power, in the shape of punishment, has then to be graduated accordingly. And here it has to be kept in view, that the infliction of punishment is itself an evil—an evil not only to him on whom it is inflicted, but to the community by which the trouble and expense of inflicting it have been incurred. Every item, therefore, of punishment, beyond what is necessary to the production of preponderant good, is punishment wasted—is a wanton act of mischief—is a crime. If it can be proved that a crime can be suppressed by the infliction of a year's imprisonment, and that the extension of imprisonment to two years will not make the suppression of it more complete, or tend more to the benefit of the public,—then is the imposition of an imprisonment for two years, instead of for one year, a wanton act of injury. It is seldom that the superfluous punishment is designedly added to the necessary: the whole is generally awarded in rashness and ignorance, and thus resolves itself into the minor offence of a want of due care for the welfare of the public. Who shall justify the infliction of a year's imprisonment, wantonly inflicted upon a man, though he be a criminal? If a justification be offered, let the following case, for the sake of distinctness, be taken. A man is tried for an offence, and the adequate punishment awarded against him is a year's imprisonment. When he leaves the prison, he is again seized, and subjected to another year's imprisonment; not because he has committed any fresh offence—not because his previous punishment was inadequate—but

* See Works, vol. i. p. 322.

because he has been a criminal ; and such a person may be punished, just as the prejudices and passions of those who administer the law may dictate.

The penal code being an institution intended for the benefit of the public at large, and the public consisting of individuals, there are two classes of persons prominently interested in its administration, whose claims have been overlooked in empirical systems of criminal law—the criminals themselves, and the individual against whom the crimes are committed. The principle of vengeance is at the root of the omission in both cases—the laws retaliate on the criminal, and the act of retaliation is considered a sufficient compensation to the injured. The utilitarian system views the matter differently—conceives that the person who has been robbed is not a savage, who is to be satiated with the blood of his adversary—and enjoins the criminal to labour to the end of making compensation, so far as it may be practicable, to the injured party. With regard to the criminal himself, the punishment, on the principles above laid down, must not be more than what is necessary to serve the legitimate purposes of punishment. If, while he is undergoing it, the convict can be reformed, there is not only a positive good done to himself, but a benefit is conferred on society, by restoring to its bosom a useful and moral man, at the expiry of the period of imprisonment. If, along with the accomplishment of this object, and of compensation to the injured party, the criminal can be compelled or induced to work, so as wholly or partly to defray the cost of his imprisonment, there is a still farther gain to society, by the reduction of a heavy burden—a burden which has a tendency to weigh against the zeal of the public in the enforcement of the laws.

Looking beyond the individual himself, to the effects of his punishment on society at large, reason will be found for deciding that it should be exemplary. As this is the element from which it derives its quality of awing the public into obedience to the laws, there might at first sight seem reason for concluding

that the punishment cannot be too severe for such a purpose ; but a little consideration will show, that it is its adaptation to this end that makes it chiefly of importance that the punishment, if brought up to the point which will be sufficient to deter by example, should not exceed it. Where punishments are not meted to offences, the criminal classes of the population see that the law hits at random ; and, with the characteristic improvidence of their order, they gamble on its chances. Moreover, where punishments are unpopularly severe, the people will not give their assistance to the enforcement of the laws. The annals of English jurisprudence present even the official guardians of the law, the judges, joining with prosecutors, juries, and witnesses, in saving the criminal. The punishment of death for forgery has strikingly illustrated this truth. At the present moment the duellist is confounded with the assassin who steps behind his enemy and secretly stabs him. The public feel that the duellist injures society and should be punished ; but they revolt at such a barbarous confusion of names and punishments : and the manslayer escapes by the connivance of the witnesses, the jury, the prosecutor, and the judge himself.

To deter others by the force of example, the punishment must, as nearly as human means can make it, follow the crime with the same regularity with which natural effects follow their causes. The *certainly* of imprisonment with hard labour will do far more in the way of prevention than the *chance* of suffering death. A proper allotment of punishment is one of the main ingredients in this certainty—others have been devised by Bentham, in his projects for the reform of criminal procedure.

It is necessary to the efficiency of the penal law, in the way of example, that the offence and the transactions concerning the trial and punishment, should not be encumbered with a barbarous technical nomenclature, which may shroud the real nature of the connexion between the crime and its punishment from the public eye. It is further necessary that the innocent

should not be involved with the guilty—a result produced by the forfeitures, and corruption of blood, of the English law. The punishment should be awarded in virtue of a fixed law, and should neither actually be, nor appear to be, influenced either in increase or diminution by the will of an individual. Thus, laws awarding extravagant punishments, with a power of pardon or diminution, are unserviceable in the way of example. The punishment fixed by the law is either too high or not too high. If it be too high, it should be reduced: if it be not, the exercise of the pardon power, popularly called the prerogative of mercy, is an injury to society. Thus, wherever the pardon power is rightly exercised there is tyranny in the law—where it is wrongly exercised it is itself tyranny.

It is of the highest moment, for the sake of example, that the punishment should proceed, as far as may be practicable, before the eyes of the public. This object, as well as that of the reformation of the convict, is defeated by the plan of transportation to distant colonies. The criminal is removed from the sight and knowledge of those companions in iniquity to whom it is essential that his punishment, coupled with its cause, should be present as a perpetual warning; and instead of a lively consciousness of the sufferings and privation he is undergoing, experience too truly shows that they often envy his imagined lot, and raise day-dreams of independence and a wandering life in distant and fruitful lands, which serve a very different purpose from that of a solemn warning to depart from their evil ways. Another main object to be kept in view in punishment, is the avoidance of contamination. This is an evil which needs no further explanation. At the time when Bentham wrote, the jails were academies for instructing the youth, whom a petty indiscretion or a small offence had driven to them, in the higher and more complex walks of crime. Many reforms have been made in this department of prison discipline: but the repeated complaints of the press show how much remains still to be done.

It was to accomplish these objects, in

relation to punishment, that Bentham devised the principles of prison discipline, expounded in his work on the Panopticon. The plan of the building, which was to admit of an inspection of all parts from a central point, was suggested by the architectural ingenuity of his brother, Sir Samuel Bentham. In this institution the prisoners were, without being subjected to the enervating and uncivilizing influence of solitary confinement, to be kept from communication with each other. They were to be kept at hard labour. As unproductive compulsory labour for the mere sake of punishment is in itself uneconomical, has no influence in improving the criminal, and tends to sour and harden his mind by the daily recurrence of inflictions, which have no other end but his personal vexation, the convicts were to be taught useful trades, as an encouragement to work; and, that they might have some opportunity of knowing how pleasing are the fruits of honest industry, they were to receive a portion of the results of their meritorious and successful exertion. They were to receive the ministrations of religion, and, to a certain extent, to be educated. Provision was made to supply them with a sufficiency of wholesome food, to ventilate all their apartments, and to keep them clean. Various methods were propounded for keeping their intellects from being stagnant, or viciously employed, when their hands were idle. And, finally, to prevent their being thrown upon the world with a tainted character, which might, by depriving them of the means of gaining their livelihood honestly, drive them back upon their old courses, arrangements were proposed for providing them with employment after their period of imprisonment had expired.*

But the founder of the Utilitarian

* On the subject of Punishment generally, see the *Rationale of Punishment*, Works, vol. i. p. 388 *et seq.* See also the *Principles of Morals and Legislation*, at the commencement of vol. i.; iv. p. 1 *et seq.*; ix. 22 *et seq.* On the subject of the Panopticon, see vol. i. p. 498; iv. 39 *et seq.*; xi. 96 *et seq.*

system, looking upon punishment of every description as the application of medicine to a moral disease, goes back into the operations of the mind, that he may discover the causes in which the disease has its origin, and prescribe a regimen conducive to the preservation of the moral health of the public. In a system of punishment, he sees the political sanction only put in motion; but he finds that the Religious, and the Moral or Popular sanction, have each their respective spheres of action, in which they may be employed to restrain the mind from vicious inclinations. It is not by its restrictive action, in regard to this or that individual offence, that either of these sanctions will operate in its largest shape; but, by superinducing on the mind habits of thought so much opposed to crime, that when an opportunity of committing it occurs, the principle of restraint being an established feature in the mind, there is no actual struggle to resist the seeming temptation. In ordinary acquisitive crimes, the operation of the sanctions is strongly marked. To the greater portion of the well-educated and well-trained part of the population of Britain, an opportunity of committing a lucrative theft can scarcely be said to hold out any temptation; and the question, whether detection and punishment would be likely to follow—*i.e.* whether the political sanction would be called into operation, is not considered, for the religious and moral sanction have long ago fixed the course of action. Of the beneficial effects of the religious sanction, it is needless to adduce illustrations in a country where its influence is so strongly felt. As its good influences, however, are powerful, so are its evil, when it is directed to bad purposes. Its evil effects are—religious wars, persecutions, and assassinations; polemical disputation carried to the extent of rousing the bad passions; priestcraft; superstition; spiritual pride; and that chronic hypocrisy, so vividly exhibited in the character of Tartuffe, which, without directly assuming religion as a cloak to crime, arrogates a special familiarity with the Deity, which

sanctifies all the worldly desires, and bad passions of “the elect.” As an illustration of the extent to which the operation of the sanctions may be ramified, the serviceable employment of the moral sanction in the prevention of violent crimes, may be found in the practice of inculcating humanity to animals in children. Minds callous to one description of animal suffering will not sympathize with another; and the murderer is nursed in the torturer of kittens. The knowledge of this truth is evinced in Hogarth’s stages of cruelty, and in the popular belief that butchers are incapacitated to serve as jurymen. As already stated, Bentham was desirous that the legal sanction should be brought to the aid of the popular in this department, and that cruelty to animals should be restrained by strict penal laws.*

His works abound with the promulgation of secondary operative measures for keeping the population pure from criminal propensities, the majority of which, to a greater or less degree, have been, and still are, the subject of public discussion. Among the most prominent of them is National education. The system for the management of the poor, having for its end the drying up the sources of poverty, would, by the same operation, dry up the main sources of crime—(see the next section.) The arrangements for training pauper children—foundlings and the outcasts of society—would have the effect of subjecting a class, whose world of public opinion is the professional emulation of felons, to the restraints and superintendence of the better portion of society; and of giving to those, whose fate seemed to place them at war with honesty and the laws, an industrial interest in the well-being of their country, and in the administration of its justice. Calamity and disease are looked upon, independently of their own distinctive evils, as generators of crime; and it is in this view that their prevention appeals to the interests and self-preservation of those who are, or may think themselves, ex-

* See Deontology, Principles of Morals and Legislation.

cluded from their influence. The officers nominated in the Constitutional Code, for preserving the public against accidents and calamities, for guarding the public health, and for removing objects which, from their being noxious

to the senses, are both dangerous to the health and demoralising in their immediate operation on the habits,—are thus so many active agents clearing the moral atmosphere from the malaria which produces mental disease.*

SECTION VII.

POOR LAWS, EDUCATION, AND OTHER INSTITUTIONS FOR NATIONAL AMELIORATION.

At the time when Bentham devoted his attention to the poor law, (1797-8,)† the then existing system had proceeded for some years in that course of degeneracy from the strict principles of the statute of Elizabeth, which commenced with Gilbert's Act in 1782, and was consummated by East's Act in 1815. Long before he could get others to join in the opinion, he saw that any system founded on the principle of merely relieving suffering, and not containing within itself restrictions calculated to stem the growth of pauperism, would gradually undermine the industrial stamina of the country, by creating more pauperism than it relieved. Subsistence being, as already stated, (see p. 31,) one of the main objects of the law, according to his division, he thought it the duty of the legislature to provide a system which should obviate, as far as human foresight could, the chance of any human being suffering from starvation. In accomplishing this, however, it was necessary to keep in view the counter-error of giving a boon to indolence, by allowing the idle pauper to consume the wealth of the industrious and enterprising producer.

The method by which he proposed to adjust the proper medium, was the same in its leading principles with that which was lately sanctioned by the legislature, as the result of the searching investigation of the Commission of Inquiry,—the rigid application of the Labour test to the able-bodied, and

the supervisance of all, by their location in buildings under the inspection of the officials and the public. He was able to foresee the evils of the strictly parochial system,—the comparative costliness, and propensity to jobbing in small local establishments,—the restrictions on the freedom, and consequently on the productiveness of labour by the settlement laws,—the abuses of all sorts that in remote districts might be preying on the vitals of society unobserved,—and the cruel hardships to which those whose position entitled them to relief might be subjected, from their not being on the right spot when misfortune overtakes them; and he contemplated the bold design of a uniform national system under central authority.

He did not propose that the central authority should be in the hands of official persons appointed by the Government. In all national institutions which involve receipt and expenditure of money, varying according to the success of the management, he advocated the contract system in preference to the stipendiary, as more economical and efficacious. His system of prison discipline, under the Panopticon plan, (see above, p. 67,) was to have been conducted under contract management, he himself being the contractor.‡ In the present case, his contractors were to be a joint-stock com-

* These subjects will be more particularly considered in the next section.

† See the Tracts on the Poor Law, Works, vol. viii. p. 358 *et seq.* See also vol. i. p. 317; iii. 72; ix. 13.

‡ The history of his vexations and disappointments in regard to this project, will be found detailed in the Appendix to the Memoirs, (vol. xi. p. 96 *et seq.*) and in other parts of the Works. The chief objection which official persons appeared to find in the scheme was, that the terms were too favourable to the public to be practicable,—a feature for which either its Author's sanguine temper, or his practical sagacity must stand responsible.

pany, those directors were to be the central board of management. Their funds were to consist in such poor-rates as it should be found necessary to levy, and the produce of the industry of the able-bodied paupers, with other contingencies. Their profits were to be so far limited, that while they might have sufficient encouragement for economical and energetic management, they should not be put in possession of the power of levying a poor-rate to provide extravagant profits to themselves. The Plan of Pauper Management—it is to be regretted that hitherto only a skeleton of it has seen the light—contains a multitude of minute arrangements for obviating mismanagement, preserving order, regularity, and good habits, educating the paupers, and generally elevating their moral standard,—which cannot be here enumerated.

In 1797, a Bill for making alterations on the poor law was brought in by Pitt. It is difficult to estimate the disastrous consequences which must have followed this measure had it been passed. A critical examination of it was written by Bentham, and sent in MS. to Pitt;* and the fortunate consequence of this lucid demonstration was, the abandonment of the measure. The general aim of this measure was simply an enlargement—and that a sudden one—of the pernicious principles which had been gaining ground for some years—that there was only one thing to be kept in view in a poor law, the satisfaction of all demands made upon the wealth of the community by its poverty, without asking questions; and that whatever deficiency appeared in the operation of the existing system, was to be simply remedied by conveying more of the money of those who had it to those who had it not. One of the provisions of the act was, an allowance, in the case of a large family, to each child unable to support itself; and it was very distinctly shown in the criticism, that the parentage of a large family would thus become a far surer road to wealth than ordinary honest industry. Another of the proposals in this singular

measure was, to provide cows to respectable paupers, likely to convert the benefit into a means of eking out a livelihood. On this proposal it is remarked: "The cow *dies* or is *stolen*, or (what is much more likely) is *supposed* to be stolen, being clandestinely sold to an obliging purchaser at a distance. What is to be done? '*Want of relief*' warranted the *first* cow; the same cause will necessitate a *second*—limit who can the succeeding *series* of cows: The disappearance of the *first* cow (it may be said) will excite *suspicion*; the disappearance of a second cow will *strengthen suspicion*; true, but upon a mere *suspicion* without *proof* will a family be left to *starve*? The utmost security then amounts to *this*, that to a certain number of successive pensions thus *bought out* will succeed a pension which will *not* be bought out."†

Bentham contemplated a system of poor laws as a means of removing out of the way the damaged part of the population, and of improving the improveable; and not as a mere provision for existing destitution. In his eyes, therefore, it was a great moral engine which might be applied to various useful purposes. The most important of these was the suppression of vagrancy and mendicancy. His officials, holding out relief with the one hand, were to be entitled to treat all mendicants who refused to accept of it, not as persons who supplicated charity to relieve their wants, but as professors of the criminal trade of begging, and so amenable to punishment. It was part of his plan, that, until some responsible person should be prepared to answer for his following an honest calling, no beggar should be removed from the workhouse. The suppression of mendicancy would, it was believed, have a great influence in reducing the number of graver crimes. A disposal of all the vagrants of a country within workhouses, unless they find security to work elsewhere, would, undoubtedly, if it came into actual and satisfactory practical operation, have that effect which the Author anticipated from it,—

* See Works, vol. viii. p. 440.

† Works, vol. viii. p. 447.

of destroying the nests in which criminals are reared.

The great subject of National Education, for which Brougham has obtained a place in the public mind worthy of its eminence, may appear to some to be treated with indignity, when discussed as subsidiary to a poor law. Bentham, however, was of opinion that the education of the indigent is far more important, in the eye of the public, than that of the rich: more important, because it serves as an instrument of social organization, which the opulent will supply to themselves, on the voluntary principle; while the means of procuring a supply for the poorer classes, becomes a matter of public policy. In this view, as a system which must be provided for by an eleemosynary fund, he considered that National education was connected with the poor law. *

The system proposed in the Plan of Pauper Management, unites both training and education. The Author had the sagacity to see, what has been in later times too often exemplified, that the seeds of the higher branches of knowledge cast into minds unprepared for their reception, may produce bad or worthless fruit. His great object was to redeem pauper children from a position in which, as outcasts from society, they were likely to remain during their lives either a burden on the charity of the community or enemies to its property; and to elevate them into the position of productive members. In a community where there are no unproductive members there can be no permanent paupers; and the very best form, in point of economy, which a provision to the poor can assume, is that in which it converts any class of persons from consuming to productive members of society. With this view, the principal end in the education of pauper children, after they have been taught the principles and practice of morality and religion, is to fit them for some trade by which they can make their bread, to train them in those regular habits which a respectable man finds necessary to his happiness, and to accustom them to value those comforts and appliances with which industry and re-

gularity only will supply them. A portion of intellectual instruction should, of course, accompany this training; for, of all inducements which the man who labours with his hands can have to keep him from degrading habits, intellectual resources are the most potent. It is only, however, as accompanying the means of making a livelihood, and in connexion with well-regulated habits, that intellectual instruction can be calculated upon as serviceable to beings in the position of pauper children.*

The remarks which Bentham left behind him, on a proper system of education for the richer classes, are to be found in certain fragmentary essays, brought together under the title of *Chrestomathia*.† The work consists partly in an exposition of the benefits of intellectual instruction, partly in the description of a project for establishing a national school for the middle classes, and partly in an analytical examination of some of the departments of instruction suited to such an institution. He adopted, in a great measure, the system of division of labour suggested by Lancaster and Bell. There are several principles of tuition laid down, the main feature of which is, the establishing a rigid mental discipline in the minds of youth—preventing their thoughts from straying, and taking measures for ascertaining, with respect to the several steps of the progress, that nothing is left in a crude and undigested state, but that whatever is learnt is *well* learnt. It is generally as a discipline to the mind, that the devotion of so much of the time of youth to the acquisition of classical syntax, prosody, and etymology, is vindicated. There is no doubt that the operation of mastering languages, so philosophical in their structure, and so little capable of being made

* See Works, vol. viii. p. 395 *et seq.* The Report on the training of pauper children, presented by the Poor Law Commissioners in 1841, is a practical adaptation and illustration of Bentham's opinion. It is to be regretted that the commissioners have not been enabled to carry out their practical application of the system to the extent which appears to have been contemplated by them.

† See the commencement of vol. viii.

use of, without a scientific acquaintance with them, as the Greek and Latin tongues, is in itself a powerful mental tonic. But if the same discipline can be accomplished by instruction in subjects more likely to be afterwards made practically available by the pupil, there would be undoubted economy in the change. Neither his own personal inclinations, nor his judgment, would have prompted Bentham to deny their due weight to classical studies. "He was a scholar, and a ripe and good one," in the ordinary sense of the term. He was partial to the Greek language, which he maintained to be, in its structure, the best suited for a scientific nomenclature. His partiality towards it has betrayed itself in many of the titles of his works — witness the *Chrestomathia* itself, (*χρηστομαθία* the study of useful things,) *Nomography*, *Deontology*, *Pannomial Fragments*, &c. To his case, therefore, the common remark, that none attack the so generally conceded supremacy of ancient learning, but those who have not had the good fortune to receive a classical education, does not apply.

To those who take much interest in the teaching of the higher branches of knowledge, the *Chrestomathia*, though only a collection of fragments, must convey many useful hints, from the clear manner in which every branch of instruction is separated from all others, and each is presented in its turn as a topic to be separately exhausted.

The subject of the education of the higher classes of society, has, from a natural analogy, been here treated in juxtaposition with the means of training and instructing the children of the poor. The main object of the present section, however, is to glance at the subsidiary legislative measures for internal organization and improvement contemplated by Bentham; and to these it is now necessary to return.

The concluding chapters of the Constitutional Code, contain a multitude of minor arrangements for purposes of public utility, of which the general Registration system is, perhaps, the most conspicuous. Legislation has made a great stride in relation to this subject

since Bentham wrote. He had to suggest the system of a uniform Register of births, marriages, and deaths, so arranged, that the making entry in the register should not depend on the choice of individuals, but should be imperatively enforced. He viewed such a general register as a grand store-house of facts, applicable not only as evidence for legal purposes in relation to the persons appearing on the register, but as providing a fund of vital statistics, upon which political economists might reason, and the legislature act. To make the vital statistics serviceable, in relation to the influence of trades, habits of life, places of residence, &c., on health, he suggested that the professions of the parties should be entered, and, in the entry of each death, the disease or other occasion of it. Those who are acquainted with the general Registration act for England, (6 & 7 Will. IV. c. 86,) will recognise it as founded on the principles laid down by Bentham, as they appear in the Constitutional Code.* The part of the code in which they appear, was not published until after that act had passed, but they had been for ten years promulgated in the *Rationale of Evidence*.† At the time when the Bill for England was under discussion, a similar measure was brought in for Scotland; but it was opposed by the clergy, was dropped, and has not been revived.

The Registration system in the Constitutional Code embraces other elements, which have not been yet experimented on—a Record of arrivals at the age of majority, and of lapses from, and restorations to sanity.‡ The proposal of a General Register, applicable to Real property, and to contracts and other transactions, did not originate with Bentham. The system has been illustrated in Scotland and in France, and partially even in England; and efforts have been made by practical statesmen, of whom Oliver Cromwell was, perhaps, the first, and Lord Campbell has been the last, to put the system in practice

* Works, vol. ix. p. 625 *et seq.*

† Ibid. vol. vi. p. 566 *et seq.*

‡ Ibid. vol. ix. p. 630-632.

on a wider basis. The importance of such a system, and the best arrangements for its operation, are fully examined in more than one of Bentham's works.*

In the Constitutional Code, provision is made for a public officer, whose duty it is to perform those remedial functions for the public, of which the want is so often felt in a thickly-peopled country, and which magistrates and police authorities cannot easily fulfil. Among the multifarious duties assigned to him, is the settlement of momentary disputes with coachmen, innkeepers, porters, &c. The traveller is much at the mercy of those classes, who, in respect to judicial control, readily distinguish, for their victims, those who will not have time or opportunity to follow up an inquiry. The principle of interference in such cases is no infringement on freedom of trade and labour. The object of all just regulation on the subject, is, not to compel the hirer to employ for, or the hired to work for an arbitrary price, but to settle, by regulation, terms which parties are presumed to accept of when they make no specific stipulation. The Local headman has many other, perhaps more important spheres of action. He is to give information to parties wishing to be acquainted with the wages of labour and the means of living, &c. in his district, to give friendly advice in disputes, explaining the probable results of an appeal to the Law, &c.†

The Health-minister has important functions assigned to him in the Constitutional Code. In conjunction with the

Indigence-relief minister, he has control over the medical officers of all eleemosynary institutions. He exercises the appropriate functions in hospitals for the sick, lunatic asylums, and prisons. The object in view, in the appointment of such an officer, is to have, in the shape of instruction, direction, and control, the application to the operations of inferior officers, of that skill which can be purchased by high pay and official distinction. This officer is to have other powers for protecting the public health. He has to see that there is a proper supply of water for the public use; to take cognizance of all means by which the public health may be injured, by overcrowded buildings, undrained lands, places of interment, and noxious manufactures; he is to exercise, indeed, in general, the functions of a central officer for the enforcement of sanatory regulations.‡

In the tracts on the Poor Law there are various minor suggestions for increasing the comforts, and raising the tone of character, of the working classes. The extent to which those who are better informed, and have larger influence in society, may aid them in counteracting their besetting sin, improvidence, is strongly urged. In the Pauper Management, a plan is suggested for the establishment of Frugality Banks,§ the main features of which have been adopted in the legislative establishment of Savings Banks.|| At the time when he wrote, Friendly Societies had received but slight aid from the legisla-

* See Works, vol. v. p. 417; ix. 634; x. 350.

† Ibid. vol. ix. p. 612 *et seq.*

‡ Ibid. vol. ix. p. 443 *et seq.* It would be an injustice to that friend of Bentham who has so thoroughly laid before the public the grounds on which Sanatory Legislation ought to be based, to allow it to be presumed that the Constitutional Code contains on this subject anything beyond simple suggestions as to the general subjects to which the regulations should apply. The suggestions might have remained unnoticed like many of their author's other valuable hints. The public owe the full inductive sifting which this subject has received solely to Mr Chadwick, some of whose remarks on sanatory regulations, written long before he could have anticipated an opportunity of bringing forward his views in an autho-

ritative form, were quoted by Bentham as illustrative matter for the Constitutional Code. See Works, vol. ix. p. 648.

§ See Works, vol. viii. p. 407 *et seq.*

|| It is a singular illustration of the smallness of the extent to which the very valuable tracts on Pauper Management have been perused, —probably from their having been published only in a periodical work, (viz., "The Annals of Agriculture,") that the first suggestion of Savings Banks is almost universally attributed to the Proposals circulated by Mr Smith of Wendover, two years after the publication of the Pauper Management. In that work, instead of the few crude suggestions with which such projects generally commence, the whole system, with its deferred annuities, and other characteristics, will be found to be distinctly explained.

ture, and were subject to all the risks, inconveniences, and miscalculations, which the operations of small bodies of uninstructed men would naturally entail on them. Their vital calculations, founded on imperfect data, were generally erroneous; and it frequently occurred, that a society which, at first, appeared to be prosperous, became exhausted before it met the claims of those who, having longest contributed to its funds, had the best equitable claim to its benefits. The meetings could be held nowhere but in public-houses; and thus the practice of frugality was attempted to be commenced in the midst of those inducements to excess which are its greatest enemies.* These evils received no correction till they were prominently exposed by the select committee appointed in 1825.

The facilitation of the transfer of small sums of money from place to place, is urged, in the Pauper Management, as an important adjunct to frugality and commercial integrity.† The plan has been practically adopted in the system of Post-office money-orders.

Though he could not be said to have made any approach to the valuable discovery of Mr Hill, Bentham so far anticipated the modern opinion of the functions of a Post-office, that he viewed it, when established on proper principles, as an institution fraught with internal improvement—with the progress of knowledge, the nourishment of the social vir-

tues, and the facilitation of trade. He thought it ought to meet with encouragement from the legislature, and that it ought not to be a source of revenue.‡

On the enlightening and civilizing influence of the press, he wrote at more length.§ He considered the editor of a newspaper as the admitted president of a department of the public-opinion tribunal, viz.—that portion of the public who support, or are directed by, the opinions of the newspaper. He was a friend of the perfect freedom of the press—that is to say, of the principle, that those who write in it should be permitted to do precisely what they please, subject to punishment for every offence against person, reputation, or property, which they may commit through a newspaper, just as if they had committed the same offence through any other means. The English law of Libel he considered despotic and capricious. Its principle is, that every man who finds anything in print which offends him, and who has money enough to raise an action, may inflict a heavy punishment on the writer. He sarcastically characterized the formality of a trial as a mockery, when founded on such doctrines; as, the very fact of a man being at the expense of prosecuting is of itself the best evidence of his feelings being hurt.|| All taxes on knowledge, he considered injuries to the welfare of a state, as an impediment thrown—generally designedly—in the way of national improvement.¶

SECTION VIII.

INTERNATIONAL LAW.

ALL that Bentham wrote on this subject, is comprised within a comparatively small compass;** but it would be unpardonable to omit all mention of a science which he was the means of revolutionizing, and which, previously to his taking it in hand, had not even

received a proper distinctive name. No work, bearing separately on this subject, written by Bentham, was published during his lifetime, and his "Principles of International Law" made their first appearance in the collected edition. From observations here and there scat-

* See Works, vol. viii. p. 410 *et seq.*

† Ibid. vol. viii. p. 417.

‡ Ibid. vol. viii. p. 583.

§ Ibid. vol. ii. p. 275 *et seq.*; v. 97 *et seq.*; viii. 580 *et seq.*; ix. 53 *et seq.*

|| Works, vol. i. p. 574 *et seq.*; v. 97 *et seq.*

¶ Ibid. vol. ix. p. 451.

** Ibid. vol. ii. p. 535-560. See the subject casually introduced vol. iii. pp. 200, 611; ix. 58, 382.

tered through his works, his opinions on the subject might be gathered; but it was almost solely in the great article by Mr Mill on the "Law of Nations" in the *Encyclopædia Britannica*, that the public could find a distinct account of the utilitarian theory of International law.

It was necessary to establish a distinction between International laws, and laws calculated for internal government, which had not been distinctly drawn in the previous works on the subject. The internal laws of a country have always a superordinate authority to enforce them when any dispute regarding them takes place among the inhabitants; but when nations fall into disputes there is no such superordinate impartial authority to bind them to conformity with any fixed rules—whether the community of civilized nations may hereafter be able to establish such a tribunal is a separate question. It hence arises that, in the internal laws of a state, there is always an approach more or less near to a uniformity of decision in disputed cases, and that the decisions may be referred to as precedents for future action. In disputes between nations, however, the decisions, if they may be called so, are more properly the victories of the stronger party, and are precedents to be followed by those who are able to imitate them, and to be submitted to by those who must submit. Hence, a reference to precedent, as the foundation of International law, must be fallacious, and no principles founded on it can be just.

What had been done, being quite useless as a guide in this department, it was maintained that the way to serve mankind in any view that could be taken of the subject was, by showing what ought to be done. The question intervenes—what is the use of showing what ought to be done, when it is admitted that there is no authority capable of doing it, and that we must leave it in the hands which we charged with having already abused it—those of the stronger party in each dispute? The answer is, that though there be no distinct official authority capable of enforcing right principles of International

law, there is a power bearing with more or less influence on the conduct of all nations, as of all individuals, however transcendently potent they may be—this is the power of public opinion; and it is to the end of directing this power rightly, that rules of International law should be framed.

The power in question has, it is true, various degrees of influence. The strong are better able to put it at defiance than the weak. Countries which, being the most populous, are likely also to be the strongest, carry a certain support of public opinion with all their acts, whatever they may be. But still it is the only power that can be moved to good purposes in this case; and, however high some may appear to be above it, there are, in reality, none who are not more or less subject to its influence. The conquerors who have nearly annihilated their enemies, are far from being exempt from the judgment of the public-opinion tribunal, regarding the extent to which, while victorious, they have exercised the virtues of generosity and humanity.

Bentham was opposed to war, as he was to every practice that brought with it destruction and misery; but he held that there were circumstances which might justify it as a choice of evils. He thought there were occasions on which a display of energy was essential to peace and security; and that those theorists who eschewed war as "unlawful," were frequently only saved from a series of oppressions which would form a dangerous precedent against all peaceably-inclined communities, by the exertions of the bolder spirits with whom they were mingled.* The wars commonly called "glorious"—the wholesale murder of human beings, on no better impulse than the lust of power and the gratification of vanity, he denounced with all the indignation of his ardent nature. His views of the right principles on which

*"In *defensio* reforce the principle is, no doubt, involved, that attack may be remotely necessary to *defence*. *Defence* is a fair ground for war. The Quaker's objection cannot stand. What a fine thing it would have been for Buonaparte to have had to do with Quaker nations!"—Vol. x. p. 581.

the sword should be drawn, involved a self-sacrifice, founded on a conscientious and serious calculation of results. His just national wars were a deliberate and well-weighed resignation of present luxuries and advantages, to obtain some end good for the community, and good for mankind; to obtain relief from the demoralising and degrading influence of servitude; or to help a weak nation struggling with a powerful.

Thus, judging that there were circumstances which would justify declarations of war, he appealed to the tribunal of public opinion regarding the method of conducting hostilities towards the desired end, with the smallest infringement of the Greatest-happiness principle. On this principle, no evil act should be done to an enemy, unless it will produce a proportional amount of benefit to the side effecting it. The vicissitudes of war afford many opportunities for a choice of operations, in which a benevolent mind will be able to accomplish as much for his own country as a malevolent, without the same sacrifice of life and property. It will be a ruling principle to strike at the government instead of the people. The disablement of the former is sure to produce the end aimed at, and may occasion a comparatively small amount of misery. When a government is weakened through attacks on the people, the operation is performed in the most cruel manner in which it can be accomplished. There can seldom be much good done by destroying the food and clothing of the people, or by appropriating such necessities, unless they are wanted for the invading army: and the effect to be produced on a contest by such heartless acts, can seldom enter into comparison with the efficacy of a seizure of warlike stores. The one must always be productive of cruelty; the other may, in the end, serve the purposes of humanity, by terminating the contest. Here, as in private ethics, self-regarding prudence goes hand in hand with effective benevolence.

There are none against whom the flame of human passion burns more fiercely and enduringly than those who, forgetting the humanity of the man, and the heroism of the soldier, have marked their progress through a hostile territory, by smoking hamlets, devastated fields, and homeless orphans.

As there are mischiefs to be abstained from in war, there are services for nations to perform to each other in time of peace. They should afford all facilities for commercial intercourse between their own and other nations, and between those foreign states which may have occasion to use their territory as a highway. The civilized part of the world is coming, day by day, nearer to just principles of international intercourse. France affording a highway for our communication with our great oriental empire, and conveying through its government telegraph the earliest news of our operations in the east, is a symptom of progress which it would have afforded Bentham the liveliest gratification to witness. Nations should afford each other every reasonable assistance in the enforcement of the law of private rights belonging to each. A community of nations bound to give assistance to each other's *political* laws, would be a most dangerous alliance; it would be too apt to become a combination of monarchs for the support of despotism. In agreeing, however, to make parties who seek refuge within its territory amenable to the private laws of the country they have fled from, whether they have attempted to escape from a civil obligation, or from the punishment of a crime, each nation confers a benefit on every other, and, by the reciprocity, a benefit on itself. When nations are better accustomed to the performance of these services to each other, and when free trade has brought them within the circumference of common interests, they will daily find more inducements to preserve the blessings of peace, and fewer causes of irritation urging them to war.

SECTION IX.

POLITICAL ECONOMY.

LIKE all the later writers on the subject of Political Economy, Bentham acknowledged Adam Smith as his master; and he professed only to analyze some of those departments which the founder of the science had not examined, or in relation to which he had adopted views inconsistent with the great principles of his own system.

The chief service which Bentham has done to this science, has been in the application of his exhaustive system to the carrying out, to their full extent, the doctrines of FREE TRADE. As in every other subject, he applied to this the criterion of the Greatest-happiness principle, and its bearing on legislation. Political Economy, if it were to be looked upon as an art, he conceived to be the art of supplying mankind at large with the greatest possible quantity of the produce of industry, and of distributing it in the manner most conducive to the wellbeing of humanity. When he asked what legislation ought to do towards the accomplishment of these ends, the answer was—Let it leave each man to do what seems best to himself. The wealth of individuals is the wealth of the community; and each man is the best architect of his own fortunes. The preservation of security is all that Political Economy looks to from the legislature—security for wealth created—security for the exercise of ingenuity and industry in creating more—security for enforcing the performance of contracts.*

This, its essential and simple duty, the legislature was found to be neglecting, while it was occupied in making abortive attempts to perform the unperformable task of increasing productiveness or decreasing consumption. It denied to the creditor, what it might so easily have given him—facilities for immediate access

to the funds of the dishonest or obstinate debtor. The debtor might be deprived of his liberty on the oath of any ruffian, and his creditor might make him a slave for life; but there was no middle course where justice could meet humanity—where the unfortunate might be spared the punishment due only to a felon, and the fraudulent might be deprived of the means of defying the law. This state of matters has been much improved in the course of modern Legislation. It cannot be denied that these improvements are in a great measure owing to the writings of Bentham, † and they are respectively additions to that security which, in his opinion, was all that Political Economy demanded of the Law.

Though it cannot, however, frame laws for directly increasing or preserving the wealth of the community, legislation may do much to enable the individual members to do these things rightly for themselves. Its chief means of accomplishing this is Education. On the effect of intelligence in increasing individual, and thence national production, it is quite unnecessary to enlarge. It gives the engineer the means of inventing, and properly applying machinery. It gives the merchant the means of knowing the most profitable markets. It gives the labourer the means of knowing where his labour is most valued, and enables him, when he finds the trade he is occupied in, falling, or becoming overstocked, to turn his hand to another. In short, in all circumstances, skill, the fruit of education, gives the producer the means of increasing the value of his produce to his own benefit, and to that of the community. (See above, p. 71.)

Rewards, for exhibitions of skill or genius in arts and manufactures, are aids to the operation of education: they serve to create emulation, and to open

* See Works, vol. ii. p. 1-103. See also vol. i. p. 302; ii. 269; ix. 11.

† See Works, vol. i. p. 546; iii. 428; v. 533; vi. 135, 176, 180; vii. 381.

and improve the faculties. On the most judicious means of adapting these rewards to their ends, he wrote a considerable quantity of remarks and elucidations. He thought the most ingeniously devised source of reward, was that of giving a monopoly, in the use of an invention, to the inventor, for some limited time—the Patent system. The great value of this arrangement he found to be in its power of adjusting the amount of the reward to the extent to which society found itself benefited. He did not adopt the view, that the produce of intellectual labour, or of skill, should be declared by the law to be like the physical subjects of appropriation, something which must be forever the property of him who brought it into existence, or of those deriving right from him. If such a principle had been opened up at the time when he wrote, he would probably have found, on a comparison of the end proposed to be accomplished, with the means of performing it, that human legislation could not accomplish so difficult a task as that of keeping all subjects of invention, and all productions of intellect, the perpetual property of some person or other, as it does in the case of physical objects—even had such a result been desirable. Accordingly, the foundation on which the Patent and Copyright laws are placed, is that of Privilege, granted as a reward for services. The impediments thrown in the way of the acquisition of the reward, by the costly and cumbrous machinery of the Patent laws, is much deplored. Bentham's suggestions as to a simpler system of Patent laws, have been taken advantage of in a series of statutes, which have been remodelled and consolidated by the 5 & 6 Vic. c. 100. This act adopts a practical facility for its operation, which was likewise suggested by Bentham—viz. a register of the inventions or patterns as to which the privilege is held, with a series of marks for separating and individualizing them.*

Bentham found one important ele-

ment, in relation to which Adam Smith had lost hold of the pure principles of free trade. The father of political economy had not succeeded in so completely clearing the nature of money of its adventitious and popular acceptations, as to be able to treat it like an ordinary commodity, subject to the common rules of trade. Hence he supported the Usury laws, which are essentially a restriction of free trade in money. As an exposition of this fallacy, Bentham wrote his "Defence of Usury."† It has often been remarked that this title is not a descriptive one—the work is no more a defence of usury than it is a defence of high prices. It merely proves the folly and mischievousness of any attempt to fix the price that should be paid for the use of money. It will be unnecessary to make any analysis of arguments which have now been seconded by the almost entire abolition of the Usury laws.

Bentham's other works on Political Economy are chiefly occupied in the exposure of the fallacy of those artificial efforts which legislation makes to increase the country's wealth. One of the most prominent and extravagant of these he found to be colonies.‡ The expense which they occasion, not only in the way of continuous support, but as the cause of wars, is enormous. They give nothing to the mother country; for they will never consent to be taxed. A trade with them is not more advantageous than a trade with any other people;—they will not give more than the market price for our goods, or sell their own to us at less. They can make no addition to our trade; for it is limited by our capital—by that amount of the proceeds of industry which we have saved up from consumption. If we can double our capital, we may double our trade; but we can never increase it by wasting our capital in compelling people to buy from us. We may give our colonies the monopoly of a certain trade with the mother country—this is just going to a narrow,

* See Works, vol. ii. p. 212; iii. 71; v. 373; vi. 584.

† Commencement of vol. iii. of the Works.

‡ See Works, vol. ii. p. 547 *et seq.*; iii. 52 *et seq.*; iv. 408 *et seq.*

and consequently disadvantageous market, instead of a wide, and consequently good one. We may compel them to consume our manufactures—we must first contrive to give them the money to buy them with; and thus we hire purchasers, to keep up a trade which cannot support itself.

Colonization is, however, not without its advantages, though few of these fall to the share of the mother country. It may be the means of removing the damaged part of a population, through a system of emigration. It is only, however, in peculiar circumstances that it will not be a very extravagant means of accomplishing this end. If there is another country which will absorb our damaged* population, the support of colonies for the purpose, is just paying for what may be got for nothing. Colonization may be the means of spreading the blessings of civilisation among savage tribes: here there is a palpable advantage to those tribes themselves, and to the world at large; but it is obtained at a sacrifice on the part of the mother country. It will sometimes occur, that the possession of fortified places abroad is serviceable for the protection of the free commerce of a nation; but this is a benefit of rare occurrence, and is very often supposed to be obtained when it is not.

The science of Political Economy has made so much progress, especially in the department of free trade, since

the date of Bentham's writings, on the subject, that it will hardly be of service to analyze his arguments against Monopolies, Prohibitions, Restrictions, and Bounties.† Perhaps no other writer on Political Economy has given so clear an account of the incidence of bounties on exportation. He describes them as tribute paid to the foreign consumer. If we can produce the article cheaper than other nations can, the foreigner buys from us of course. If we reduce it below its proper remunerating price, he is not the less ready to buy from us—but the only way in which we can so reduce it, is by paying part of the price for him.

In the case of *bounties upon exportation*, the error is not so palpable as in that of *bounties upon production*, but the evil is greater. In both cases, the money is equally lost: the difference is in the persons who receive it. What you pay for production, is received by your countrymen—what you pay for exportation, you bestow upon strangers. It is an ingenious scheme for inducing a foreign na-

† Probably the only subject in relation to which Bentham is behind the knowledge of the present age, (his works on Political Economy were almost all written in the 18th century,) is in his views of the incidence of machinery on the wages of labour. Taking the direct advantages of machinery on the one side—cheapness of production, and the command of foreign markets arising out of that cheapness—he deducted from these the loss to labour, (vol. iii. pp. 39, 67-68.) He had forgotten to keep in view, that of the capital exhausted on hand-made, and that on machine-made produce, it is not a necessary fact that a less proportion of the latter should go in the form of wages of labour than of the former. In the case, for instance, of a certain capital spent on the production of stockings, if they are hand-knit, the wages go to the knitter; while, if they be machine-made, the wages go to the miner, the smelter, the machine-maker, &c. The elements of the prices of commodities are, rent of land, on which the raw material is produced—wages of labour—and profits of stock. These elements will vary in their proportions, according to incidental circumstances; but it does not follow that they will be necessarily different in the case of hand-produce, from what they are in the case of machine-produce. Another discovery of modern science in this department, which seems not to have been anticipated by Bentham, is, the fallacy as to the influence of the Sinking Fund, so clearly exposed by Dr Robert Hamilton in his work on the National Debt.

* The term "surplus population" is generally employed in relation to emigration; but this implies an application of the system too wide to be practicable. Population never can be too great when there is employment for all; and no nation could afford to carry off the numbers annually added to a population which, by such removals, has free room to grow. All who can be removed by any practicable system are immediately replaced; and, before any advantage can be had by the removal, it must be shown that, by some improvement* in the institutions and habits of the country, the unproductive individuals removed are to be replaced by productive. The committee of the House of Commons, of 1841, on emigration from the Highlands, with great caution, recommended that no money for the purpose should be advanced by Government until there was some security, in an amendment of the Scottish Poor Law, that a similar unproductive population should not succeed to those so removed.

tion to receive tribute from you without being aware of it; a little like that of the Irishman who passed his light guinea, by cleverly slipping it between two halfpence.

The Irishman who passed his light guinea was very cunning; but there have been French and English more cunning than he, who have taken care not to be imposed upon by his trick. When a cunning individual perceives you have gained some point with him, his imagination mechanically begins to endeavour to get the advantage of you, without examining whether he would not do better were he to leave you alone. Do you appear to believe that the matter in question is advantageous to you? He is convinced by this circumstance that it is proportionally disadvantageous to him, and that the safest line of conduct for him to adopt, is to be guided by your judgment. Well acquainted with this disposition of the human mind, an Englishman laid a wager, and placed himself upon the Pont-neuf, the most public thoroughfare in Paris, offering to the passengers a crown of six francs for a piece of twelve sous. During half a day he only sold two or three.

Since individuals in general are such dupes to their self-mistrust, is it strange that governments, having to manage interests which they so little understand, and of which they are so jealous, should have fallen into the same errors? A government, believing itself clever, has given a bounty upon the exportation of an article, in order to force the sale of it among a foreign nation: what does this

other nation in consequence? Alarmed at the sight of this danger, it takes all possible methods for its prevention. When it has ventured to prohibit the article, everything is done. It has refused the six-franc pieces for twelve sous. When it has not dared to prohibit it, it has balanced this bounty by a counter-bounty upon some article that it exports. Not daring to refuse the crown of six francs for twelve sous, it has cleverly slipped some little diamond between the two pieces of money—and thus the cheat is cheated.—Vol. iii. p. 62-63.

The reader who takes an interest in financial projects will find much to engage his attention in the plan for converting stock into Annuity notes.* The project is an improvement on the Exchequer Bill system. It invites Government to come into the field in opposition to the private banks, with the advantage in its favour of allowing interest on its paper securities. The notes are to be of various amounts. They are to carry interest daily from the day of issue, and are each to have a table by which its value in interest added to capital may be ascertained on any given day. The Author was of opinion that these notes would be used as cash, as of their value on each day according to the table.

SECTION X.

LOGIC AND METAPHYSICS.†

BENTHAM did not draw a line of distinction between these sciences; and he seems to have considered the terms almost convertible. It follows that he did not treat the subject of Logic, as it has generally been done, particularly by late writers, as a formal science,‡ teaching the laws of thought, as distinct from those sciences which treat of the matter of thought. How far he would have continued his mixture of the two subjects, after he had made some approach to completeness in his examination of the various departments of mental philosophy, it is difficult to say. He seems to have projected, as already stated, (see

p. 10,) a full and searching inquiry into all the qualities and operations of the human mind, including an investigation not only of the laws of thought, but of the materials on which they work. To this end, he more than once set himself down to examine and classify the powers of the mind. He exhibited an intention of pursuing the examination of mental operations with a comprehensive, and, at the same time, most minute anatomy. To this purpose, he divided and subdivided the materials of thought; and being brought by his subdivisions into an analysis of the matter of language and grammar, left, in his fragments on these two sub-

* Works, vol. iii. p. 105 *et seq.*

† The Works referred to in this Section are those in vol. viii. down to p. 357. See also vol. iii. p. 285 *et seq.*

‡ The single word science is here used, for the sake of brevity, though Bentham, like Whately, considered that Logic was both a Science and an Art.

jects, specimens of the minuteness with which he intended to go over the whole field.

His notion of Logic was, that it was the means of getting at the truth, in relation to all departments of human knowledge;* and that it thus was, to use his own expression, the schoolmistress of all the other arts and sciences.† It would seem, then, to be included in his view of the subject, that any system of Logic, which left the student ignorant of the means of ascertaining the truth in regard to any one element of human knowledge, was an imperfect system. If Logic be considered as divided into the Analytic and Dialectic branches, the latter half of the subject was entirely rejected by Bentham; for, viewing dialectics in its original signification of the art of debating, he considered it as an instrument of deception rather than of truth—as a system of rules for enabling the more adroit disputant to defeat the less able. If, however, Logic be divided into the Analytic branch and the Synthetic,‡ he has left behind him traces of his labours in both departments: in the former examining the phenomena which the mind exhibits in the process of acquiring truth; in the latter, constructing instruments to facilitate its discovery.

Perhaps the most remarkable and original feature of the analytic portion of the fragments, is the division of all nouns substantive into names of Real, and names of Fictitious entities; a dis-

inction which he follows out with his usual clearness and consistency, and of which he never, in any of his works, loses sight. If this classification in some measure resemble Aristotle's division into Primary and Secondary substances, it will be found, on examination, to have a much more comprehensive influence, and, from the manner in which its author employs it, to have a much more important application to the arrangement of the elements of thought. Nouns expressing real entities are names of things of which we predicate the actual existence—such as a ball, a wheel, an impression on the mind, &c. Nouns expressive of fictitious entities, are, all those nouns which do not express such actual existences. The distinction seems to be a pretty obvious one; but the uses which its Author makes of it are novel and important. In our phraseology as to fictitious entities, we borrow the forms of words which have been invented for explaining the phenomena of real entities; and we cannot speak of the former without the actual use, or think of them without the mental use, of these forms of words. Thus *motion* is a fictitious entity. We talk of motion being *in* a thing, or of a thing being *in* motion; and in using the preposition *in*, we borrow a word which was invented to be used upon physical matter. *Relation* is a fictitious entity—one thing is said to *have* a relation to another, and in this word *have* we are obliged to borrow a word constructed for the purpose of intimating corporal possession. The method in which I *have* my pen, and the method in which logic may *have* a relation to metaphysics, are two very different ideas; but we cannot express the latter without borrowing the use of those words which were constructed to represent the former. Hence, fictitious entities cannot appear in language, our instrument of thought, except through the use of borrowed words. They have no phraseology of their own, and can have none. Whether they have separate existence or not is a question, we have not data for determining: to our minds they are so unreal, that we cannot think of them without clothing them for the time-being

* Works, vol. viii. pp. 220, 222.

† Ibid. p. 76.

‡ Bentham would not himself have admitted the use of the terms Analysis and Synthesis with this popular acceptance. In a very curious note, (vol. viii. p. 75,) he has shown that the same elements separated in analysis are never the same that are put together in synthesis. The pieces, if they may be so called, with which the process of synthesis is performed, are not the same which result from the process of analysis. "The subject analysed is an aggregate or genus, which is divided into species, those into sub-species, and so on. The only case in which synthesis is exactly opposite and correspondent to, and no more than co-extensive with analysis, is, when between the ideas put together there is that sort of conformity from which the act of putting them together receives the name of *generalization*."

in the words which are invented for thinking of real entities.* How far a pursuit of this subject would throw light on the old dispute of the Realists and Materialists—how far misapprehension as to the actual subject of discussion may have arisen from this necessity of borrowing the phraseology of real entities for the purpose of discussing fictitious entities, is an inquiry on which the present writer cannot venture.

The next feature prominently demanding attention in the logical tracts, is the instrument which their Author used for analyzing and laying out his subjects—his exhaustive method of division, on the Dichotomous or Bifurcate plan. He took the hint of this system from the old editions of the *Isagoge* of Porphyry, in which there is a diagram exhibiting an exemplification of it, commonly attributed to the inventive genius of Porphyry himself, but probably the work of an editor. The dichotomous mode of division is frequently alluded to in the writings of the Aristotelian logicians, and it received considerable attention from Ramus; but it was, like many other instruments of discovery, a mere plaything for the intellect, until it fell into the hands of a man who was able to adapt it to practical service. The Porphyrian tree represents as the centre or trunk a *genus generalissimum*, from which successive branches issuing carry off some separable quality, until it has gone through as many processes of division as can be applied to it, and leaves in the two last condividends the two most concrete entities which can be comprehended within the general term.

The service which Bentham derived from the study of this diagram, was in its leading him to the conclusion that the only species of division which in its very terms bears to be exhaustive, is a division into two. It may happen that any other division—such as that of the works of nature into the animal, vegetable, and mineral kingdoms, may turn out to be exhaustive: but the object is to find a formula the use of which of itself secures exhaustiveness.

It is, only by a division into two parts that logical definition *per genus et differentiam* can be accomplished. The species is marked off by its possessing the quality of the genus, and some differential quality which separates it from the other species of that genus. It is only by the expression of a difference as between two, that thought and language enable us to say whether the elements of the thing divided are exhausted in the condividends. We can only compare two things together—we cannot compare three or more at one time. In common language we do speak of comparing together more things than two; but the operation by which we accomplish this end is compound, consisting of deductions drawn from a series of comparisons, each relating to only two things at a time. Comparison is the estimate of differences; and language, by giving us the word “between,” as that by which we take the estimate, shows that we can only operate on two things at a time. Thus, if we have a division of an aggregate into three, we cannot give such a nomenclature to these three elements as will show that they exhaust the aggregate. If we say law is divided into penal and non-penal, we feel certain, in the very form of the statement, that we include every sort of law under one or other of these designations; but if we say that law is divided into real, personal, and penal, we cannot be, in the same manner, sure that we include every kind of law. If we wish to proceed farther in the division, and, after dividing the law into penal and non-penal, say the non-penal is divided into that which affects persons and that which does not affect persons, we are sure still to be exhaustive; and this system we can continue with the same certainty *ad infinitum*.

The system is undoubtedly a laborious and a tedious one, when the subject is large, and the examination minute. The exemplifications which the Author has given in his tables are the produce of great labour, and cover but a limited extent of subject. It was more as a test of the accuracy of the analysis made by the mind when proceeding with its ordi-

* See Works, vol. viii. pp. 113, 126, 195 *et seq.*, 263.

nary abbreviated operations, than as an instrument to be actually used on all occasions, that the Author adopted the bifurcate system. As a means of using it with the more clearness and certainty, he recommended the adaptation to it of the Contradictory formula—viz., the use of a positive affirmation of a quality in one of the condividends, and the employment of the correspondent negative in the other. The value of this test, as applicable to any description of argumentative statement, is, in its bringing out intended contrasts with clearness and certainty. It is not necessary that the Differential formula should be actually employed. In its constant use

there would be an end to all freedom and variety in style. But it is highly useful, to take the statement to pieces, and try whether its various propositions contain within them the essence of the bifurcate system and the formula; in other words, to see that when differences are explained, or contrasts made, they be clearly applied to only two things at a time, and that the phrasology, instead of implying vague elements of difference, explains distinctly what the one thing has, and what the other has not.*

* For an account of the Bifurcate system, see Works, vol. viii. pp. 95, 103, 107, 110, 114, 253.

THE END.

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